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## CAUSES CÉLÈBRES.<sup>1</sup>

### THE WATCHMAN OF ELDAGSEN.

IN Eldagsen, a small town in Hanover, was living in the early part of 1854 one Hartmann, an excise collector, with his wife. They had been married some fourteen years, but none of their four children had survived to the period we are speaking of. In February of the year just mentioned, Mrs. Hartmann was again expecting to be brought to bed of another child. Her step-son, a youth of nineteen years, was not at the time residing with them, and the household consisted only of themselves and one servant, a decent and reputable girl of about seventeen years of age.

On the 16th February, 1854, Hartmann left home for the purpose of getting change for some gold. This was about seven o'clock. His wife was lying on the sofa, a lamp was on the table beside her, and the servant was clearing away the supper as usual. As Hartmann went out, a few kindly words passed between himself and his wife, whom he was never again to see alive.

The evening was gloomy, with snow falling, as Hartmann, wrapping himself in his cloak, hurried down the street to the house of a Mr. Meyer, where he remained longer than he had intended. He heard, indeed, the watchman's even-

<sup>1</sup> From the Law Magazine & Law Review, August, 1850.

ing horn blowing, which is sounded at nine, and is repeated on the rounds every hour. He set out from Meyer's house about half-past nine. On his return, looking through the window, he did not see his wife on the sofa. He called to the servant. Obtaining no reply, he opened the door, and found the girl lying on the floor covered with blood, and, as he supposed, in a fit, to which she was subject. He sought in vain his wife in the inner room. Horror-stricken, he shouted for help. A neighbor and his daughter hastened to his assistance, and with the aid of a light the unhappy wife was found on the floor, bathed in blood, between the sofa and the table. In the mean time other people arrived, who deemed it necessary forthwith to take Hartmann away from the horrible scene, as he had fallen into a state of distraction, in which he remained for many weeks.

The two women had been cruelly murdered; their skulls were fractured and their throats cut, but no marks of blood or hard struggling were found spread on the floor. The doors in the house stood open, but the bureau in the sitting-room had been forced. The private box of Hartmann, which he said contained some hundreds of dollars as well as the trinkets and ornaments of his wife, was gone.

When the surgeon who was called in appeared, he found the corpses cold and stiff. The blows and wounds on both the women were alike of a mortal description.

The police authorities made a close examination of the house and the neighborhood. There were no traces of the murderer, but a visitation to the houses of suspected people was immediately entered on. Amongst others, Ziegenmeyer (a baker) and Busse (a mason) were called on. These had supped together, and had been out in company this evening. They were, however, though strongly suspected, not then taken into custody; but the opposite neighbor of Busse was set to watch him, and his observation of the conduct of the suspected man resulted in his report that twice in the same night a light was kindled, and twice had some one gone up and down stairs, and that the wife, next morning, had been observed to "wring her hands over her head, and then let them fall on her lap *as if* she was in grief and agitation." Herrmann, a police agent from Hanover, arrived at the spot the next day, set on foot inquiries, and undertook the investigation. He examined, amongst others, the two men Ziegenmeyer and Busse, with

respect to their doings on the night of the murder: Ziegenmeyer gave, in a hurried and embarrassed fashion, his account of himself, which created in Herrmann's mind a strong suspicion of the man. A discrepancy in their statements was perceived. The former deposed that after supper he had gone straight to the house of a notary in the town, to speak about a lawsuit, and the other man declared that he had remained with his friend in his house till nine o'clock. In Busse's house was found a hammer, one point of which appeared to have been very lately thrust into the fire, "*as if*" to remove any marks on it; but there still remained a dark stain, which was clearly perceptible. Besides these facts, nothing further tending to criminate either of the men was discovered, though their clothes—their ordinary dress, which they had worn on the evening in question—were examined; nor could anything conclusive be drawn from the facts discovered. And now suspicion for the moment was directed by the town talk to others. It was whispered that Hartmann himself was the guilty man, and that the wench was pregnant by him; and many other opinions were expressed, but equally groundless and vain.

The mystery was still unsolved, when, on the 17th March, Busse and Ziegenmeyer were again arrested on new information, under the following circumstances: It appeared that a man named Wild had been appointed, three days after the murder, as a watchman<sup>1</sup> in Eldagsen. It was made his especial duty to exercise surveillance over the house of Busse and Ziegenmeyer. On the 13th March, a month after the event had occurred, this man deposed before the burgomaster, that at seven o'clock on the evening of the murder, he had left home and had reached Hartmann's house, and was on the opposite side of the road when he saw the two suspected men advancing towards him. He saw them suddenly before him, and he had an opportunity of seeing that they had not been walking on the road on either side of the house just previous to their appearance. When asked why he had not made this communication earlier, he replied he was afraid so to do until he was invested with the official character of constable. He added that, whenever Busse met him, he made threaten-

<sup>1</sup> *Stillwächter*. His duty was to watch at night, without making a noise with a horn to inform ill-doers of his approach. The horn-blowing police carried on their duties much after the fashion of the old London watchmen, and with probably the same happy result, that of protecting themselves at least from contact with robbers.

ing gestures at him. Official inquiries as to character were made, and it was reputed that Wild was a very correct and creditable man, while the accused were in bad repute, and had been engaged in no work during the winter, and must, therefore, have obtained their living by other means. On further examination, Wild repeated his statement with additional particulars. Moreover, a man of the name of Müller deposed, that on the 15th February he had remarked Busse prowling in the neighborhood of Hartmann's house. And one Schwaize alleged, that at seven o'clock on the night of the murder, he had seen the two men in company leaving Ziegenmeyer's house. These facts were held as accumulating important evidence against the two suspected men.

The town had now become full of fear, and resorted to various superstitious practices with a view to solve the mystery.

The lower classes had recourse to the divinations of the "Key and Hymn-book." Widow Haller, the mother-in-law of Wild, was especially expert in this art. The book is, according to this ancient and valuable mode of incantation, set a-swinging, with the key tied inside it on a particular song of prayer or praise, and interrogations are administered to it as to names and circumstances, to which it vouchsafes answers by regulating its motion in accordance to prescribed rules. This valuable auxiliary to criminal procedure, we may observe, might, with spirit-rapping and table-inspiration, be introduced perhaps into some of the continental courts of justice with at least as good an effect as certain other parts of their judicial system; and in England we suspect it would be an equally appropriate court of criminal appeal as that of newspaper editors and correspondents, which we have recently seen constituted after a late conviction for poisoning. It is interesting to know that the book-appeal convicted Busse and Ziegenmeyer, just as the newspaper-appeal lately acquitted Smethurst. The popular voice in Eldagsen, indeed, universally condemned the two men. The government had offered one hundred dollars reward on the conviction of the murderers, and the following communications were made in consequence:—

1. Busse is a terror to the neighborhood.
2. Busse was some years since apprehended for stealing oats.

3. Busse was once suspected, with regard to a widow found drowned.

4. Likewise, in 1853, with relation to some trees on the roadside.

5. Busse's wife had been seen to hold a great consultation with her husband the night after the murder, and no one could make out why.

One or two more circumstances of equal importance were elicited, thus, — that he was forty-nine years old, and had been, moreover, many years before, sentenced to be imprisoned for eight months for theft; whilst Ziegenmeyer was thirty-five years of age, and had NOT been convicted.

On March 17, these men being again taken into custody, further inquisition into how they had spent their time elicited no incriminating facts so far as can be seen, except that they had been in company that evening. It was thought worthy of record, however, that Busse had sought to borrow money for Ziegenmeyer; and that, after he had been drinking schnaps, he introduced himself to a friend with "Here comes the murderer!"

Wild not only adhered to his identifying the two men on the night in question, and described the dress, but now added this further statement: "The night following the murder I was taking my rounds, and went under the bedroom window of Ziegenmeyer and his wife, and heard them talking of money; and the former said quite distinctly within the hearing of the witness, that he (Ziegenmeyer) had settled the wench, and Busse the woman; and that the woman had kicked and had a pitiable death." This confession was conclusive, if true; and the next step taken was to investigate out the reputation still more closely of the parties, and so to discover the *probabilities*. The magistrates gave an indifferent character to Ziegenmeyer. He owned a few acres of land, but these were mortgaged for £200. The clergy had but a bad impression of him, through his indifferent character and his non-attendance at church; whilst of Wild, it was reported that he was a very correct person, a *good church-going man*, and attended service and communion with laudable assiduity, and was much respected. This testimony to Wild's character was all the more essential, as his evidence had been tendered bit by bit, and was not very connected, but, indeed, vacillating. His evidence with regard to Busse's dress seemed incorrect; nor did the

police fail to observe that no marks of blood nor the possession of deadly weapons could be traced home to the accused.

About a fortnight after the second apprehension of these men, a curious piece of evidence, characteristic of the German procedure in criminal cases, was brought forward. Ziegenmeyer's little daughter, four years old, was heard telling a story to her companions about the murder. She said, "Busse killed the mistress, and father killed the maid;" and she added further, when interrogated by a neighboring gossip, — "Father and Busse brought home 100 white dollars; father had blood on his boots, which mother wiped off; and Busse's sleeve was covered with blood;" upon which the child's mother slapped her, and bade her hold her chatter. But, in the mean time, doubts were thrown on Wild's evidence, as it was alleged that, on the night of the murder, he had been ill at home, and it was not probable he could have been in the street as he alleged; but no great weight seems to have been attached to this point.

On the 20th June, another witness (Möller) was brought forward, who deposed that he had gone to Ziegenmeyer's wife and pretended he knew all about the murder; she had confessed that "Busse had done the deed, and, if her husband was implicated, the former had seduced him to the act." She gave, however, a very different version of the conversation, alleging that Möller had come to her and said, "he knew all about it, and unless she would yield to his lust he would inform against her husband." She had, however, rejected his advances, and said, "if her husband was guilty, let them punish him."

In the following October the proceedings were ripe to be laid before the various courts before which such criminal proceedings must pass; and a difference of opinion was found to exist in the judgment of one section. The case was incomplete, and the prosecution was recommended only to be dropped. Another division of the functionaries came to an opposite conclusion, and the result was, that directions were given to prosecute the two prisoners for the murder, as well as to investigate another charge of robbery on one Topp, which had been also laid against them. The evidence, of which we have already given a sketch, was investigated with additional detail, involving much hearsay evidence, many contradictions as to time, dress, and other

circumstances connected with the prisoners, and also tending to inculcate others. For example, a Mrs. Buddensiek deposed that she had invited Busse, as soon as she heard of the murder, to walk up with her to Hartmann's house and see the corpses; but he refused, and lay down in bed again, saying he could not bear to see such things, which Mrs. Buddensiek thought very odd, as Busse was fond of seeing what was curious and strange. But it was thought, at the same time, a very suspicious circumstance against Ziegenmeyer, that *he* had run off immediately to Hartmann's house when he heard of the murder. Everything that anybody in Eldagsen had said, thought, or supposed with relation to the murder, was considered in evidence; and on the 18th November, 1854, the court laid a formal information against the prisoners for the murder of Mrs. Hartmann and her servant; and for the theft of some goods of one Topp; and against the prisoners' wives as accessories to the murder.

On 7th December, 1854, the charges were opened before a jury of twelve sworn assessors, comprising three lawyers, four merchants, one tradesman, two landowners, one hotel-keeper, one postmaster, and one land agent. Several new witnesses were now called to speak as to the hour when the murder must have taken place.

One Wollenweber heard, at a quarter to eight, cries of agony issuing from Hartmann's house; and that this was the exact period of the murder seemed substantiated. Mrs. Klammeroth was quite clear (and her evidence was corroborated by others) that Busse and Ziegenmeyer came home together to Busse's house *between* half-past seven and a quarter to eight. That Busse wore then a light gray jacket, five witnesses deposed.

When the chief witness Wild gave evidence, the official report declared that it was not ready, connected, or consistent. Thus his first statement was, that he had been going his rounds as watchman the night next after the murder (17th February), and had *then* heard the admission of Ziegenmeyer under his window. Whereas, in fact, he *was not appointed* watchman till the 22d February. He then fixed three or four days later for the occasion, and eventually the twelfth day after the murder. He then declared his earlier statements had been misunderstood, but this he failed to render obvious to the court. He affirmed also, stoutly, that though it was a dark night he could identify the men with

certainty; and that Busse had on a blue smock. It was also made a question whether Wild had really been out at all on the particular night of the murder; and it did not appear that he had narrated anything of what he had seen and heard even to his wife.

The court, however, gave ear, it would seem, to evidence of remarks made by Mr. Hartmann, to the effect, that if the affair had happened some years since he would have married again; and attempts were made to criminate him either as a conspirator with the two accused, or independently. But, although all this was good illustration of what people will say when their suspicions are excited, and their loose tongues allowed free play, it came to nothing on being considered.

Without Wild's and Möller's evidence, there was little ground even for suspecting the two accused men; but it was urged that three courts<sup>1</sup> had agreed on their guilt, and on submitting the evidence to the jury.

The president of the court eventually left to them the question whether Busse and Ziegenmeyer were guilty or not. After a long discussion they returned a verdict of guilty, and the sentence of the court condemned the prisoners to death.<sup>2</sup>

Ziegenmeyer was horror-stricken at the verdict and sentence. He sent to his advocate the same evening, and solemnly protested his innocence, but was assured there was no prospect of escape. The next morning he was found hanged in his cell.

Busse more calmly or doggedly awaited his fate; but the sentence was not, however, immediately carried out. To him was graciously accorded, on 13th February, 1855, the doom of perpetual imprisonment in chains, which was to be embittered by his being, on the 15th and 16th February in each year (the anniversary of the murder), consigned to a dark dungeon. He once more saw his wife, and bade her be of good cheer, for he would yet be free. Ziegenmeyer's property was sold, and his wife and children turned out into the world to beg or starve. And so the good people of Eldagsen were satisfied, and justice was vindicated, and the tragedy was thought to have been played out. The gossip

<sup>1</sup> Viz : The Staatsanwaltschaft, the Rathskammer, and the Anklagekammer.

<sup>2</sup> The penalty for this crime was more severe in its character than common execution, for the convict was to be dragged to execution on a cow-hide !

and rumors which had been turned into evidence — the prejudice and suspicion which had been elevated to the dignity of legal testimony — had now done their work. The suicide of the one convict was accepted as proof of conscious crime, the persistent resolution of the other, as the hardihood of a confirmed villain.

The neighborhood of Eldagsen, however, was not destined to remain free from further outrage. It happened that at Weetzen, a village not far from Hanover, lived an aged captain of the name of Götz, no longer in the service. He had recently married the young widow of the owner of some landed property. She was reputed to be well off, and she and her husband lived on the estate. On 1st September, 1855, the couple had retired to rest for the night, but the lady was ill, and could get no sleep. About twelve o'clock the husband had risen to attend to his wife, and then, putting out the light, they once more returned to bed and fell asleep. Suddenly the wife awoke with the sensation of receiving a violent blow on her head. Jumping up she received another on her face, but was able to reach the next room, when she seized the bell and rung violently, and then fell senseless to the ground. Her husband was likewise struck on the head violently. The servants, hearing the alarm, rushed to help, and a doctor was fetched.

On searching the room, an axe was found covered with blood. Neither of the wounded people had seen anything, but they thought, until the axe was found, that they had been struck by a stone cast at them through the window. Some one had, however, certainly been *in* the room, and escaped by the window, which was broken. For a fortnight Madame Götz was in great danger, nor was it till ten weeks had elapsed that she became convalescent.

Suspicion soon fell on a certain man of the name of Bruns, a discharged servant of Mr. Götz. There were traces of blood on a bough of the tree, which the assassin had grasped in his descent from the window. The foot-tracks led to the high road. Bruns had been with a girl to whom he was affianced on the evening in question, and who lived in Gehrden hard by, but he was at home between seven and eight in the afternoon, and had been seen in bed at half-past five the next morning. Though this looked *prima facie* like an *alibi*, the police agent Herrmann, who it will be

recollected had been active in the prosecution of Busse and Ziegenmeyer, still had his suspicions. On the 2d September he therefore repaired to his house, and noticed first of all a wound on the hand of Bruns, which the latter accounted for by a very credible explanation. Herrmann, therefore, had recurrence to a professional expedient. Unobserved he placed the axe in the room, and then casually asked the parents of Bruns whose axe this was. Each claimed it as belonging to themselves; and, moreover, the father declared that this axe, which was generally in his own room, was, on this night, taken into his son's. Bruns was thereupon taken into custody, and he admitted that on the night of the outrage he had visited his betrothed. He was taken to Hanover by Herrmann, who, on his road, managed to make a piece of evidence thought worthy of record in these proceedings. He exclaimed, "Good heaven, what must be your feelings!" to which the *prisoner answered nothing, but sighed!* On 3d September, Bruns, however, broke silence, and confessed, it was alleged, that out of revenge he had assaulted the unfortunate couple, but declared he had had at first only the intention of breaking their windows.

In Herrmann's mind another idea had been excited. The nature of the crime, and the character of the wounds, impressed him with the notion that the same man, and the same weapon, engaged in the act at Weetzen had done the deed at Eldagsen. He had entertained doubts and mental discomfort about the conviction of the other two men, in which he felt he had taken too active a part, and he resolved to sift the case to the bottom. He therefore set off to find Louisa Sprengel, the betrothed of Bruns; and lo, in her ears *were the rings of the murdered Mrs. Hartmann!* This led to further search, and other of the poor exciseman's wife's trinkets were, in spite of the denial of their possession, found in Louisa's lodgings. She acknowledged that Bruns had given her these things, and Herrmann, thus confirmed in his belief, hied him once more to Bruns's house, and there found the metal box in which Mrs. Hartmann was wont to keep her valuables, and which had been stolen at the time of her murder. This evidence was forthwith brought before Bruns by the police officer, who asked him to explain these circumstances. This he did by alleging that he bought the trinkets at Eldagsen, except one which had been given him by a girl to whom he had been previ-

ously engaged. He said he never had a metal box as described at all. When it was shown him, however, he was struck dumb, but still would not confess.

Expedients were therefore resorted to by the police authorities to obtain a confession; and we may here observe that the English rules of protecting the accused against making admissions of guilt, may seem theoretically absurd, and occasionally may preserve villains from meeting their due punishment, yet, in the proceedings here narrated, the moral and legal inconveniences of trapping even the guilty into a confession to be used on the trial, instead of proofs, are notably illustrated.

A fellow-prisoner of Bruns, Wolfersdorff, was employed to induce Bruns to make a clean breast, and on 6th September gave information that he had succeeded,—a statement, the truth of which the authorities had the strongest reasons afterwards to doubt. Whereupon a police constable, Brüdern, was introduced to perfect the arrangement. He pretended that he was come to keep watch over Wolfersdorff, but presently began to narrate how a certain man of the name of Bruns was said to have after all committed the Eldagsen murder. Bruns trembled; his companion then proceeded to dwell on poor Ziegenmeyer's fate, and that of his unhappy children begging their bread. He further encouraged Bruns to confide his griefs to him, and so wrought on him that, seizing the crafty policeman's hand, he confessed, as Brüdern declared, everything. As Brüdern next morning left the prison, Bruns besought him to procure for him a clergyman.

On the 7th September, Bruns made ample confession before the sitting magistrate, which was to the following effect: On the evening before the murder of the Hartmanns on the 15th February, he had gone to their house to buy a stamped paper, in order to use it for an agreement with Götz. The next day, as he passed the house, the thought struck him "that something was to be got there." He knew that the collector's cash-box would at that time of the month be full; and he thought it would be found in the back room. He sought to enter by the back door; failing in this, he cautiously opened the front door. He had then looked into the room on the left hand. He found it so dark that he was about to seek a light in the kitchen, when the reflection from the opposite house enabled him to

dispense therewith. In searching for the candle, however, he had found a hatchet, and taking this he again repaired to the ground-floor. He here met the serving-girl with a light in her hand. She recognized him, as she stepped back into the room, as "the man who was there last night," and set the light down on the table immediately. He instantly rushed behind her, and struck her with the weapon on her head, so that she fell speechless to the ground. Then, for the first time, he observed Mrs. Hartmann, who was rising from the sofa, probably with the intention of leaving the room. At her also he immediately aimed so deadly a blow that she dropped without a word. He then proceeded to rifle the bureau with the aid of the instrument in his hand. After completing his theft, he observed his victims stir somewhat, though he heard no sound from their mouths; upon which he grasped a knife, and cut the throats of both the women. Now a horror seized upon his mind, and he threw away the hatchet in the house, and the knife into the street, washed his hands in the brook, and reached home safely.

It is worthy of note that at this period Bruns was in service with a person of the name of Jasper; and being much trusted, he was, after the murder, especially engaged in the house to protect the females, and in the evening was wont to take his place in their sitting-room for that purpose.

After this confession before the sitting magistrate, the man became deeply affected, wept, and begged for a clergyman. He felt, he said, his conscience unburdened, now that he had told the whole truth. He saw how great a sinner he was, and he repented bitterly. It is, however, a curious fact, but one not rarely recognized in the mental condition of men like Bruns, that at this very moment he was misstating and keeping back a part of the truth. In what respect he was attempting to deceive we shall presently see. Again, as regards the Weetzen outrage, it is extremely improbable that he was acknowledging the truth, though he never would vary his statement. When appealed to with respect to this latter outrage, he, a man whose life was already forfeited, and who therefore should have had no object any longer in denying the facts connected with the affair, had it pressed upon him that his taking with him to the house of Götz the deadly instrument, and his using it in an analogous, though happily not so successful, a fashion

as at Eldagsen, were very suspicious circumstances; but he replied that, although appearances were against him, he must persist that neither theft nor murder had then been his object, but to break his old master's window out of revenge. When the priest came, Bruns, on his knees, again repeated the whole narrative above given.

A witness, moreover, at the time turned up, who had seen the trinkets which Bruns had subsequently given to his second lover, formerly in the possession of the first. Wild, too, the main witness against Busse and Ziegenmeyer, had now fallen into discredit with the authorities, for (*inter alia*) claiming the blood-money, which he had previously renounced lest his veracity should be thereby impeached.

Turning for one moment to the fate of the convict Busse, we should record that on the 12th December the State Department received a petition from him, being then in prison at Lüneberg, in which he prayed that six witnesses therein named might be examined, whose testimony would certainly bring him back once more to freedom; and further, indeed, he urged that the evidence already given, which had been mistaken by the courts, might be reconsidered. He added, "My weakness is too great here to enter upon these points." On 2d January, 1856, Busse's petition was taken in hand. He showed how his pastor's evidence in criminating his religious character, and the burgomaster's in disparaging his industrious habits, were false, and the other witnesses' testimony tended to bear out his exculpation. It still was needful, however, in order to satisfy justice, notwithstanding the confession of Bruns, to be clear that the latter had *alone* committed the murders.

Bruns was therefore indicted, and put on his trial for these murders, *either* in conspiracy with others or alone; and also for assaulting and wounding Götz and his wife, on 1st September, 1855.

On the 26th March, 1856, two years therefore from the time of the Eldagsen murder, Bruns was brought to trial, and to the astonishment of all, when called on to plead, *pleaded not guilty*. He alleged that he had been pressed and forced into his confessions, which were not true,—that the trinkets and ornaments found in the possession of his betrothed he had found about Easter, 1854, before the house of Mr. Hille, in the upper town of Eldagsen, wrapped up in a blue paper. He thought they belonged to a woman pass-

ing on just before him; and he responded, in his examination, in other particulars plainly enough. As to the threats employed, though the *magistrate*, who first investigated the case, certainly had not used them, yet Bruns thought he must stand by what he had said under the pressure of Herrmann the constable.

The truth of this allegation of the prisoner was of vital importance, and the court had to enter upon the inquiry. Both Brüdern and the turnkey, Wortmann, denied the charge of undue pressure having been exercised towards the prisoner, but their conduct seemed open to grave suspicion; whilst that of the policeman, Brüdern, was certainly even less free from doubt; and there was good reason to doubt the credit of Wolfersdorff, which had indeed been too readily accorded. For example, one of the alleged points of confession was, that Bruns stated that when he had bought the stamp, Hartmann had put the groschen with the rest of the money; whereas Hartmann recollected that the coins being from the Brunswick mint, he had actually put them in his pocket, and not deposited them with the rest of the tax-money. There was no reason why Bruns should have invented such a minute falsehood; but it was a likely piece of small evidence to be forged by a lying witness. Further, it was clear that the first day *after* the confession Bruns actually had been immediately relieved of part of the prison discipline, that of the strait-jacket.

On the other hand, the confession was of a very detailed and close description. The prisoner accounted for this by saying, that his acquaintance with the depositions on the former trials had enabled him to supply the minutiae. The fact, *e. g.* of the light thrown into the kitchen from the opposite house was tested by experiment; and the finding a hatchet in the kitchen was thought an important and corroborative fact. Traces of blood had also been noticed on the hatchet when first found, which was deemed an important fact, notwithstanding that it also appeared that the instrument had been also used for cutting off ducks' heads, and the marks in question were very old. It seemed, moreover, that Bruns had been flush of money; but no one had observed in him the least change of demeanor during the exciting time of the murder and its investigation.

The probabilities on the whole evidence had now to be considered by the jury, and they returned eventually the

verdict of GUILTY against him; and he was condemned to be executed, just as poor Busse and Ziegenmeyer had been condemned a twelvemonth before.

When all hope had vanished from him, he again resolved to make a full confession, which differed in certain respects from the former one, and by no means justified all the conjectures and inferences which, in the course of his trial, his judges made with respect to certain facts; so dangerous in criminal trials is the habit of drawing on the speculations of the probable, instead of accepting the facts only which are proved, and their necessary consequences. In the former confession Bruns had told how he had gone down to the kitchen for a light, which he could not find, and how the reflection from the neighbor's house had answered his purpose. This, he now acknowledged, was mere invention on his part; so, too, the detail about his finding in the kitchen the hatchet which he had used for the purpose of the murder, was a fiction. "I gave," he now admitted, "a wrong account of the hatchet in order to screen myself to some extent. I washed my hands," he continued in this last confession, "with my handkerchief; I threw it away, and I have often wondered that it was never found. I got home at the latest at a quarter past eight. There was only a little blood on my nails, which I washed off next morning. On the back of the hatchet there was also blood, which I wiped away easily. I put the hatchet on the evening after the murder into the kennel, and next morning brought it again into the stable. Though I had a pocket-knife with me, I did not use it to cut the women's throats, but one which I found in the room, and which I afterwards threw away." He added other particulars which, being of no particular interest, we, for sake of brevity, will not attempt to recount. We may add, however, that he exonerated Busse entirely; and further declared that it was not want or poverty which drove himself to commit the horrid deed.

The next act in this judicial tragedy sees *both* the unfortunate convicts, Busse and the confessed murderer Bruns, once more before the court. *Both* were now again put on their trial according to the cumbrous and self-stultifying proceedings of the country. Busse, with his tall, well-knit figure,—fixed eye, glancing from under his bushy brows,—his black hair thinned by his dungeon life, which seemed, moreover, to have somewhat broken his defiant attitude;

Bruns, small and fair,<sup>1</sup> carefully dressed and arrayed. He never moved his eyes from the judge, but exhibited throughout the greatest intelligence and acuteness. And there also, on the table, between the jury and the prisoners, lay the two skulls of the unhappy murdered women,—sight terrifying to the guilty conscience, and appealing, as it were, for justice at last. The head of the girl exhibited one great fracture, with the bone which had been broken away lying underneath. That of the woman lay split into two pieces. He adhered, however, to his confession, adding that, from his fright, he could not remember all the details of the ten or fifteen minutes during which he was in Hartmann's house.

What seemed to puzzle the court was the question, why Bruns had not prosecuted his robbery into the little room of Hartmann, where the chief plunder, viz: that of the excise money, was to be had. To the importunity of the judge on this point he aptly replied, "Mr. President, you may imagine the reason better than I can tell you. When one has placed himself in the position I had, he does not think much of money."

One cannot help suspecting, notwithstanding the confession, that the man took his own axe, and proceeded that night to the house with the preconceived intention of robbing, and murdering if need be, all who interfered with his project; and it is probable his visit the night before was with a similar purpose, which accident alone baffled. It seems improbable that, both at Eldagsen and Weetzen, this man should have his axe with him, and, going for the purpose of using it as a tool, he should be induced to use it as a weapon.

The exact time of the murder was supposed, on this occasion, to have been arrived at. It was about half-past seven when Wollenweber deposed to hearing frightful cries in the house; and he "remained there ten minutes till the sounds ceased." He said he thought the sound was of "the women who were trying to sing, but could not manage it;" but his imitation was like a groan.

On 23d September, 1856, Bruns was convicted and condemned to death; Busse was acquitted.

<sup>1</sup> His profile is declared to have closely resembled Schiller's. To physiognomists must it be left to decide whether Bruns was or ought to have been a poet, and was lost to the world by misfortune, or Schiller ought to have been, and was in heart, a robber,—a character his first play shows he well appreciated.

The hard character of Bruns is illustrated by his bearing during the trial. He could not forbear from saying in joke, that he had a right to exact a fee from the multitude who thronged to see him tried. Nor was his tranquillity disturbed except for the moment when the verdict was delivered. He remained till his execution perfectly at ease.

One curious circumstance may here be noticed. It seems that the poor murdered girl, a fortnight before she met her fate, had told a companion of a horrid dream she had had, — that she and her mistress had been murdered in bed. Unfortunately for the dream, *two* persons, a *man and a woman*, were the murderers. Had this been left, like many cherished mysteries, unexplained, and if the murder had not been brought home to one man, it would have formed a valuable testimony to the virtue of prophetic dreams. It turned out, however, that she and her mistress had both been alarmed some days before the dream, by two suspicious, ill-looking faces peering through a window at them.

And now Wild was put on his trial for perjury. Not less than fifty-five witnesses were called. We cannot here follow the trial, in which is well exhibited the way in which his false evidence had been commenced, received, fostered, and perfected, its inconsistencies and improbabilities been overlooked and bolstered up, a cruel conviction secured, and a judicial murder on Ziegenmeyer committed.

But we will here briefly review the evidence on which the innocent were found guilty. This was done on the occasion of Wild's trial, too late, alas! for the ends of justice. Viewed by the light of the subsequent trial of Bruns, and his confession, the court could not help seeing how the truth had been perverted, and how the habit of leaning always against the accused had resulted in the monstrous verdict against Busse and Ziegenmeyer. Wild had sworn that, between half-past seven and three quarters-past seven o'clock on the night of the murder, he had *seen* the two prisoners pass close by him. He recognized them by their voices, the one saying, "Would to heaven we were well out of this street!" and the other replying, "Hold your tongue." He had recognized their dress. Busse had on a blue smock — a proved untruth — the other a gray coat. Busse, too, he had marked clearly (though the night was dark) by his hand, *which had lost one finger!* Further, Wild stated this most improbable fact, that twelve, fourteen, or sixteen days

after the murder, he had heard under the window Ziegenmeyer make his confession. He was, he afterwards swore, not clear whether Ziegenmeyer said this in his sleep or not. "I did not," said he, "impart this to the burgomaster, Sudendorf, till the 13th March, partly because I was afraid, and partly because one Baxmann had told me I dare not do so. I was not on good terms with Baxmann, but he several times tried to induce me to tell him all I knew about the murder. I never spoke to him about the reward, and it was another man, Helmke, who applied for it for me without my cognizance." The latter assertion was satisfactorily proved to be utterly false.

Sudendorf now declared that on the first interview with Wild he had told him nothing about having overheard Ziegenmeyer's conversation; and, indeed, the hesitating and hypothetical way in which he had at first opened the conversation with Sudendorf was a remarkable circumstance, but not allowed to have any weight attached to it in favor of the accused. Herrmann deposed that Wild had confided to him his evidence about recognizing the two men; that he not only believed it, but was actually of opinion that Wild himself, by repeating the story himself, believed it. Herrmann also affirmed that, as to the rest of Wild's statement, he had come to the conclusion that it was the man's invention, and this shook his belief in any of his statements. *When* he came to this conclusion is not made clear, nor is it worth much. The idea of a *diseased fancy* in Wild could not be entertained: medical testimony on this head overthrew the theory.

The magistrates before whom the first charge was heard observed that Wild was uncertain and varying in all his evidence, except that of having met the two men in the street as mentioned.

Baxmann swore that, when in talk with Wild, he had thrown doubt on Wild's evidence, who bade Baxmann be quiet and he should have half the reward. But Baxmann had not mentioned this fact before, because, said he, "no one had asked him about it."

Had Wild's testimony at the first been properly examined, and genuine statements only received from the witnesses, instead of the accumulation of gossip, and hearsay, and imaginary conversations, though the genius of German jurisprudence would have been outraged, the cruel injury

perpetrated by courts of justice so called, would have been saved.

But the end of these trials had not yet arrived, owing to the technical rules of criminal law. The former trial, in which Bruns with Busse had been indicted, had to be repeated. On the trial of 7th April, 1856, the former had been tried and condemned to death. In the following September he was once more put on his trial *alone*, and again condemned to death. Being required as a witness on Wild's trial for perjury in October, Bruns was kept alive for this purpose, and again had to give his oft-repeated account of the matter. This was the third occasion he had to detail his horrible confession. He was then taken back to Hildesheim, where he remained many weeks waiting his execution.

At last, on 28th November, the sentence was carried out, and Bruns was beheaded on a hill in the neighborhood of Hildesheim. It was one of those disgusting exhibitions not uncommon in this form of capital punishment. He was actually hacked to death. Four blows were inflicted, and the last falling in a downward direction, severed the head from the trunk. Improving and civilizing scene! alike calculated to elevate the standard of humanity and lend dignity to the law! It is recorded that, during his punishment, he received the consolations of religion with much edification, and wrote to his unhappy parents excellent and appropriate letters.

We might here end our account of these extraordinary proceedings, but we find in certain remarks of the learned editors<sup>1</sup> of the work to which we are indebted for the narrative, some passages which we think will be interesting to our readers at the present time,—the more so that trial by jury,<sup>2</sup> as established in England, has of late been, we may almost say, itself put on its trial, and its imperfections freely canvassed. These observations may perhaps lead us to maintain the opinion that, whilst the institution in question is not *perfect*, the experience of the procedure of other countries suggests the view that it is at least the *best possible*

<sup>1</sup> Drs. Hitzig and Häring.

<sup>2</sup> The German editors affirm that, in England and North America, there are open associations formed, which bind their members never to give a verdict of "*guilty*" in capital cases. Surely, so far as England is concerned, they are misinformed. Isolated cases have occurred where jurymen have been so resolved; but the combination to break oaths, as suggested, is certainly unknown to us.

tribunal of which the present condition of society admits. The learned jurists who have prepared the history of this case observe that it is incumbent upon them to inquire, *How it was possible* that justice should have so miscarried and so halted, and that the innocent should have been convicted of a capital offence? The old institutions of the inquisition and the torture have often produced such consequences; but here, in modern Germany, the facts on which life and death depended were sifted by the *four* divisions or offices of justice. 1. By the Examining Magistrates. 2. By the Chamber of Councillors. 3. By the Upper Court of Deputies. 4. By the Impeachment Chamber.<sup>1</sup>

The proceedings are next laid before the jury, and finally, the High Court of Justice have a right of veto or appeal, in the event of the verdict of guilty. There are therefore  $1 + 3 + 1 + 5 = 10$  professional men engaged on such proceedings. *Ten* jurists watching the course of justice, should generally preserve a prisoner from an unrighteous verdict. Yet the contrary is the fact. Von Arnim, when minister of justice in Prussia, was so horror-stricken with the discovery of the defective working of the system in his country, that he exerted himself to bring about a reform. Within his knowledge no less than *six innocent people had been condemned to death*, and only saved from their fate by lucky accident. (See *Staats Lexicon*, von Rotteck and Welcker, IX. 52, Art. Jury.) Here at least it is observed, it is not the Institution of Jury which is to blame, for the learned jurists, as Welcker points out, are those to whom most of the blunders are referable, and the jury plays but an inconsiderable part in the trial. Besides, there is a common phrase which cannot be too strongly condemned, which is often addressed to the jury before whom the facts are at last brought, having been previously moulded, dealt with, and decided on by "learned men." It is to the effect that "So many and such able state jurists have recognized the guilt of the accused, that you, gentlemen of the jury, can have but little difficulty in coming to the same safe conclusion."

The mode of examination is the basis of all that is mischievous in the German procedure. It partakes of the nature of "cooking." The courts are indeed committees of prosecution. No cross-examination as to the motives of

<sup>1</sup> We render the technical term as well as we are able, but there are of course no institutions in England exactly corresponding to those in Hanover.

the witnesses, and the grounds of their statements, is permitted, as in England. Again, when a witness for the prosecution, like Wild in the above case, breaks down, witnesses to *his* character are allowable, to reinstate his credit. Here Wild was held up as a good churchman and communicant! Further, hearsay evidence (when even the original testimony might have been had, if it was worth having) is recklessly entertained. Another egregious element for preventing justice, is the bringing up the whole history and supposed character of the accused, as affording probabilities of his capacity for the particular crime laid to his charge. Such detail is sought for with the eye of suspicion, while there is great uncertainty which attends all investigations which belong to reputation, especially when the subject of the inquiries is not in a position to defend himself.

It is also well remarked that when suspicion has been generally directed against a man, the police follow the matter up, and are awake to all that weighs *against* the accused, but are blind to the counterbalancing evidence. "Trifles light as air" are so magnified and multiplied, that when they are brought before the court, shaped and colored, they assume an importance and significance utterly disproportionate to their real value. Barren facts assume the form of pregnant fallacies, and an unjudicial imagination constructs an ingenious and delusive fabric on a rotten and incoherent base.

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*United States District Court. District of Massachusetts.*

*In Admiralty. October, 1860.*

CUTTING v. SEABURY ET AL.

Where a minor left his father's service, and went to a port where he was a stranger, and there shipped as of full age for a whaling voyage, during which he perished.

*Held*, That the father could not maintain an action for the loss of the services and society of the son, arising from his death, unless the person who shipped him knew that he was a minor.

It cannot be considered as settled law that no action can be maintained for damages occurring from the death of a human being.

The facts of the case sufficiently appear in the opinion of the court, by

SPRAGUE, J. — In September, 1850, the minor son of the

libellant left his father's employment in Palmer, Massachusetts, went to New Bedford, and there, representing himself as of full age, was shipped by the respondents for a whaling voyage. The vessel sailed soon afterwards, and when last heard from was in the Arctic Ocean, in the fall of 1853, and is believed to have there perished, with all on board.

In the spring of 1855, the libellant went to New Bedford, and made a settlement with the respondents, the extent of which is in controversy. On the 6th of July, 1860, this suit was commenced after a few days' previous demand.

When a minor is knowingly withdrawn from the service, society, and control of his father, the latter may have an action not only for the value of his services, but damages for the loss of his society, and of the opportunity of directing his education and training.

The libellant admits that he has received compensation for the services of his son while on board the vessel, and he prosecutes this suit to recover damages for the loss, that is the death, of his son, which damages are alleged in the libel to consist in being deprived of the "services, comfort, and society" of his child from the time of his death until his minority would have expired.

Upon this, several questions arise.

I. Can a suit for damages ever be maintained for the death of a child?

II. If ever, can it be upon the facts of this case?

III. Was this claim embraced in the settlement made in 1855?

IV. Is it a stale claim, and to be rejected for that reason?

Upon the first question whether a suit can ever be maintained by a parent for the death of a child by the wrongful act of another, the authorities are not agreed.

In *Carey and wife v. the Berkshire Railroad Co.* 1 Cush. 475, the Supreme Court of Massachusetts decided against the action, and rested their decision upon the absence of any English authority in favor of such a claim, and upon the opinion of Lord Ellenborough in *Baker v. Bolton and others*, 1 Campb. 493, where he declared that, "in a civil court, the death of a human being cannot be complained of as an injury." By act of 9 and 10 Vict. ch. 93, an action is given for the benefit of those who may sustain damage

by the death of a person caused by the wrongful act of another. This shows that Parliament were of opinion that there ought to be a remedy in such case, and that none previously existed. The Massachusetts statute of 1840, ch. 80, is quite different from the English. It imposes, in certain cases, a fine, to be recovered by indictment, for the benefit of the representatives of the deceased. In *Ford v. Monroe*, 20 Wend. 210, damages were recovered by the father of a minor who had been killed by the negligence of the defendant's servant. But the objection that no action for the death of a person would lie, was not raised, nor does it appear by the report that any such question was even adverted to. In *James v. Christy et al.* 18 Missouri, 162, where a minor was killed on board a steamboat by a defect in the machinery, a suit for the loss of his services, by the administrator of the father, was maintained against the owner of the boat.

The weight of authority in the common law courts seems to be against the action, but natural equity and the general principles of law are in favor of it. It is not controverted that, if a father be wilfully and wrongfully deprived of the services, society, and control of his minor son, he may maintain an action against the wrong-doer if the son survive. Why, then, if the same wrong be done by superadding the infliction of the death of the child, should his right of action be lost? By the civil law, and by the laws of France and Scotland, such an action can be maintained. This is admitted in 1 Cush. 480. The common law to some extent, that is, as to deaths occasioned by a felony, was formerly, at least, different. How is this difference to be accounted for? Upon what reasons did it rest? I think it may be legitimately traced to the feudal system and its forfeitures.

The doctrine that, where death is occasioned by a felonious act, the private wrong is merged in the felony, is often laid down by writers, and has been judicially decided. It is recognized as if still in force by Judge Story in *Plummer v. Webb*, 4 Mason, 380. But the reason for it has not accompanied its annunciation. It must be found in the law by which all the property of the felon, real and personal, was forfeited to the crown. This left nothing to satisfy the claims of private justice. It would have been idle to maintain an action which could afford no redress. By the feudal system, all estates were deemed to be held by grant

from the king, as paramount lord, upon numerous conditions, — the most familiar of which were service and fealty. Felony was a violation of a condition of tenure, and a forfeiture was thereby incurred. The paramount right of the crown took all the property of the felon, and thus absorbed all means of redress, and left the injured vassal or subject remediless. But forfeitures have been abrogated. The competition between the prerogative of the sovereign and private right, by which the latter was overborne, no longer exists. Why, then, should not the latter now prevail? The only answer which has been given is that there is no principle of the common law by which a person injured by the death of another can have remedy by suit. To this I am loth to assent. The common law recognizes and is pervaded by the great principles of natural justice,—one of which is, that for every wrong there should be a remedy. The operation of these principles is often obstructed by the political organization of the State, and this was especially so while the civil polity was feudal. So far as that system has been abolished, the restraint upon private rights which its existence required should no longer remain, but the beneficent principles of the common law should spring into free and full action. When a main portion of an old feudal castle is swept away by the hand of modern improvement, its props and appendages should follow, — especially if the change has rendered them a mere nuisance and deformity. We should regard the unwritten law as animated by all-pervading principles of individual justice, — ready by their own energy to expand into new applications when artificial restraints or obstructions, by public policy, are removed; it may thus be made in a great measure to meet the wants of a progressive civilization.

The doctrine laid down by Lord Ellenborough in *Baker v. Bolton and others*, 1 Campb. 493, is not limited to cases of felony, but embraces all deaths. How is such extension to be accounted for? It may have arisen from that passion for generalization which has so frequently led judges to lay down broad propositions, extending a rule of law far beyond the foundation on which it rested; or it may be that, by the ancient common law, no action could be maintained by a father for the infringement of parental rights by the act of another, unless it was accompanied with that intent or wilfulness which, if death ensued, would make the offence

manslaughter at least, that is, felony. In such state of the law, if the act had not the ingredient of an intent which might make it felony, then no action could be maintained, even if death did not ensue, and if it had that element, and death ensued, then there was a felony, and consequent forfeiture.

As the law is now understood, a father may maintain an action for the violation of his parental rights, if the son survive the injury, although the wrong would not have been a felony if he had died. Surely there is now no reason why an action for the same act should not be maintained when to the injury is added the calamity of the death of the son. The question is not one of local law, but of general jurisprudence, and I cannot consider it as settled that no action can be maintained for the death of a human being. But I am not under the necessity of deciding that question, because there is another objection which is fatal to this suit. It does not appear that the respondents knew that the son was a minor when he was shipped. He was a stranger to the respondents, and offered himself for the service, and was shipped as a person of full age.

This libel is for a tort. It is not to recover the value of services received by the respondents, but for the death of the son in a voyage for which he had been wrongfully engaged and sent. Knowledge of the minority seems to be essential to the maintenance of such an action. In *Sherwood v. Hall*, 3 Sumner, 127, it was held by Judge Story that a master taking a minor on board a vessel, knowing him to be such, renders the owners liable to the father not only for the loss of service, but also for extra expenses and losses, — the knowledge of the master being constructive notice to the owner. In *Plummer v. Webb*, 4 Mason, 382, Judge Story says if a minor be, "by force or fraud, by abduction or seduction, withdrawn from the power or protection of the father, he is entitled to an action for the tort." In *Butterfield v. Ashley, et al.* 6 Cush. 250, it is said by the court, enticing away, employing, or harboring a servant, entitles the master to an action, but it is a material allegation that the defendant knew that he was the servant of the plaintiff. In *Butterfield v. Ashley*, 2 Gray, 254, the court say that, "if the defendants, knowing that the said Charles H. was the son and servant of the plaintiff, unlaw-

fully received him, then being such servant, into their service, and harbored and kept him," an action by the father would lie. In all these cases the court seem to have considered knowledge of the minority by the defendant essential to the maintenance of an action by the father for a wrong. Such also seems to have been the view of the learned judge in the *Platina*, 21 Law Reporter, 397-400.

My decision must be in accordance with the authority of the Circuit Court of the United States and the Supreme Court of Massachusetts, and this suit, therefore, cannot be maintained.

The two remaining objections, viz. the settlement and the lapse of time, I do not think it necessary to consider. I would observe, however, that the evidence leaves it somewhat doubtful whether the settlement did not embrace all the claims arising out of the shipment of the son, and considering this fact, and the lapse of time, as well as the nature of the claim, the objection of staleness would deserve careful consideration if the decision turned upon that point.

The libel must be dismissed, but, considering the hardship of the case, the libellant having received only one hundred dollars in the settlement, I shall not subject him to costs.

*Libel dismissed without costs.*

*Robert C. Pitman*, of New Bedford, for the libellant.

*Wm. W. Crapo*, of New Bedford, for the respondents.

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*United States Circuit Court. November, 1860.*

*District of Massachusetts.*

SIMEON BOWEN, ET AL. IN EQUITY, ASSIGNEES OF HERVEY  
M. RICHARDS *v.* HENRY L. KENDALL.

*Removal of actions from State to Federal courts, under St. of 1789,*  
*ch. 20, § 12—Injunction—Usury.*

Where an injunction had been granted by the State court to restrain the sale of mortgaged property, and the case was then removed from that court to the federal court *to be entered at the next term*, and the defendant, taking advantage of the interval, was proceeding to sell, contrary to the injunction of the State court: An injunction was issued by the federal court, notice of the application having been given to the defendant, and the petition duly filed.

Whether the respondents would be liable to an attachment, should they sell before the injunction could be served upon them, they having had notice of this application; *quære*.

Where a mortgagor charged the mortgagee with usury and petitioned for an account :

*Held*, that this court, as a court of equity, will not require from the mortgagee an account in order that he should charge himself with such a penalty.

The power of sale of mortgaged property is a matter of contract, and should not be overthrown by the court.

The bill in equity in this case was brought in the Supreme Court of Massachusetts, for Bristol County, in September last, and an injunction was granted by that court to restrain the defendant from selling certain real estate situated in Attleborough, particularly described in a certain mortgage made by Hervey M. Richards to Benjamin Hopkin, to secure the payment of \$25,000. The defendant being a citizen of Rhode Island, the suit, upon his petition, was removed from the State court to the United States Circuit Court to be entered here on the next May term, and the Supreme Court thereupon, according to the act of Congress,<sup>1</sup> in such case made and provided, could proceed no further. Taking advantage of this state of affairs the defendant gave notice, and was proceeding to sell the real estate, this day, when the bill in equity and transcript of proceedings in the State court were filed in this court, and an application made for an injunction to restrain him from such act. It was suggested to the court here, 1. That this court could not proceed because the cause was not to be entered here until the coming May term. 2. That this court could not grant an injunction, because they had not ordered sufficient notice to the adverse party. 3. That the court could not do so without fully inquiring into all the facts.

SPRAGUE, J. *Held*, that in a pressing case, like the present, he should deem the written notice given by the plaintiffs to the defendant of this application, coupled with

<sup>1</sup> The act referred to is the act of 1789, ch. 20, § 12, (1 Sts. at Large, 79.) It provides "that if a suit be commenced in any State court against an alien, or by a citizen of the State in which the suit is brought, against a citizen of another State, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such State court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, . . . and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, . . . it shall then be the duty of the State court to accept the surety, and proceed no further in the cause; and the said copies being entered as aforesaid in such court of the United States, the court shall then proceed in the same manner as if it had been brought there by original process."

the evidence that it was well understood by the defendant, as sufficient; that he should grant the injunction at once, inasmuch as the Supreme Court of the State had already done so, and that injunction had not been judicially dissolved; that he was not prepared to say that the defendant would not be punishable by the State court for a contempt, if he proceeded to violate their injunction. But as it seemed to be understood that the Supreme Court of the State would proceed no further, this court would forthwith grant an injunction to restrain the sale. Whether the respondent would be liable to an attachment, should they proceed to make the sale before the injunction could be regularly served on them, it being shown that they had notice of this application, he had no occasion now to determine.

*Injunction issued.*

The counsel for the defendant, on a subsequent day, moved that the injunction be dissolved.

I. Because no sufficient notice was given to the adverse party before this injunction was granted.

II. Because this court has no power to act in the premises. No bill in equity has been properly entered, or can be properly entered in this court, before the next May term. The bill in the State court, where the injunction was first granted, was virtually a dead letter after the removal from that court, and the injunction fell with it; and both are inoperative until the next May term of this court, when the bill could only be properly entered here, and a new injunction could not be granted here until that time, and the injunction of the State court was in fact dissolved when the cause was taken from that court.

III. There were no merits in the plaintiff's bill, and an injunction was not necessary.

SPRAGUE, J.—“It could not have been the intention of congress to allow a party to dissolve an injunction at his pleasure (no matter how important it was), simply by removing the case into a court of the United States.”

Mr. Curtis.—“Undoubtedly congress did not intend to do it; but my ground is that they have done it, as they have done a great many other things which they did not at the time intend to do. I think Judge McLean, in Ohio, has so decided.”

SPRAGUE, J.—“I will hear you first upon the merits.”

An affidavit of the defendant was then read to show that the defendant was rightfully proceeding to sell under a power of sale mortgage, which was good and valid, and in his hands as an innocent purchaser, and that the plaintiffs had directly, positively, and repeatedly, in writing, recognized it, and admitted its validity, and thereupon defendant asks this court to dissolve this injunction. That it would not be equitable for persons who had caused another to purchase, under an appearance that all was right, to turn around and repudiate the sale. The plaintiff now alleges usury as a corruption of the contract between the maker and the original mortgagee. If this were so, it is contended that a court of equity will not, or ought not, to stop a sale of the property under the mortgage, unless the balance admitted to be due is brought into court or tendered. More than that, the party who sets up usury and flies to a court of equity, must come with clean hands. He must bring in the money actually advanced, with interest, or show his readiness and ability to refund it. That is not equity which permits a man to hold all he gets, and take back all he gave.

But this contract was made in Rhode Island, and by the law of that State it must be construed, and by the laws of that State there is no penalty which can here be enforced. At any rate, let the contract be as it may, no court of equity will enforce a triple penalty, nor can it be enforced, even at law, before usury has actually been paid.

The counsel for plaintiffs contended,

I. That the defendant was not proceeding to sell in the manner pointed out in the mortgage.

II. That the State courts, where the bill was originally filed, can, by law, proceed no further, after the removal of the cause therefrom. But by a petition now filed here in the nature of a bill of equity, whereby all the facts stated in the bill are adopted, and the record of the State court produced, the plaintiffs now make themselves plaintiffs here, and are in the same position as a plaintiff who files his bill at rules or in vacation. In England, in cases of extreme necessity, waste, or emergency, injunctions have been granted on a petition before any bill had been filed. This is a suit in court of which this court will take cognizance.

III. The notice was given, and the party actually was

represented here, and his representative made suggestions to the court, and afterward said he would withdraw, but not until he had been heard and the decision was made against him.

IV. As to the merits, the plaintiffs are ready to meet the questions when answer is made. The case cannot be tried on a preliminary motion. It would be a practical demurrer, which would precipitate a hearing before evidence taken. The injunction has been granted. The time for hearing on that question has gone by. The defendant must now put in his answer before he asks for its disposition.

On the merits our answer is: 1. That Kendall, the defendant, had knowledge of all the facts touching usury. 2. That whether he knew it or not, the law is peremptory, and gives the plaintiffs a right to deduct the whole amount of usury, and triple the amount; and usury can be set up against even an innocent purchaser. In this case the defendant took the note overdue.

SPRAGUE, J.—The original injunction in this case was ordered by the Supreme Judicial Court of this State, October 24, and the case was then removed from the State court to be entered at the next term of the United States Circuit Court, to be held in May, 1861. Thereupon the bill of complaint and transcript of the proceedings in the State court were filed in this court, together with an application for an injunction; and on the 16th inst. an injunction was granted here. This was done on the ground that there existed a pressing emergency, to prevent a sale which was to have taken place that very day. It seemed to the court at the time that the urgency of the case required their interference, and that, too, without delay. But the question is now presented, Had this court power to grant that injunction? Such power has been denied by the counsel. This case had been removed from the State court. That court could proceed no further in the suit, and the defendant was not bound to enter the case here until May next. It is contended that thereby the injunction of the State court became void, and that the defendant could act without regard to it. This court does not undertake to decide how far that is true, or how far the defendant might become liable as for a contempt of court if he should violate the injunction before it was in some other way dissolved. Suppose the injunction granted by the State court

had been to restrain a man from selling a negotiable note fraudulently obtained, could a party holding the note have his case removed into the United States Court, and then sell the note in five minutes after he had caused the action to be removed? This court feels certain that Congress never intended to produce such a result. There is, however, great difficulty in so construing the act of Congress. It is highly important that the cause should come within the jurisdiction of this court immediately on its removal from the State court; and yet, such is the frame of the statute of the United States as to render it difficult, by any fair construction of its language, to sustain such immediate jurisdiction. This is the first time the question has been presented, and it need not now be decided, for, by the view which I take of the case, it may be otherwise disposed of. When the application for this injunction was made, it was represented that delay would be ruinous, and the only purpose of the court in granting the injunction so promptly was to hold the property just as it was, until further examination could be had. And I shall consider the question whether there ought to be an injunction upon the respondents in the same manner as if the application therefor had now been heard for the first time.

The plaintiffs in their bill ask for an account, and to be allowed to redeem. For what is the respondent to account? Not for rents and profits, for he has never been in possession. It is indeed alleged that some payments have been made to his assignor, the original creditor, but these payments are indorsed on the notes, and were well known to the plaintiffs.

The only ground urged for an account is, that credit should therein be given for a statute penalty for usury taken by the original creditor. It is not set forth in the bill at what place the contract was made, or where it was to be performed. It is not alleged that the defendant or his assignor has been guilty of a breach of any law of the State of Rhode Island or of Massachusetts. It is claimed that three times the amount of usury said to have been paid should be deducted under the law of Massachusetts. The real estate mortgage is in Massachusetts, but from the slight proof we have, it is probable that the contract was made, and to be performed in Rhode Island, and if so, then the laws of Rhode Island would govern it. The defendant,

under oath, expressly denies all knowledge of any usury, and declares himself to be an innocent purchaser for a full consideration, and no one contends that he has personally received usury. Now this court, sitting as a court of equity, would not require from the defendant an account in order that he should charge himself with such a penalty. In this case the defendant had nothing to do with the alleged usury, or with any payment or receipt of it, and it is much better known to the insolvent debtor what sums have been involved in his dealings with the original mortgagee.

It is said that the plaintiffs wish to redeem and prevent the sale under the power contained in the mortgage, and allege that the defendant is not disposed to execute that power fairly, and with due discretion. But if the plaintiffs wish to redeem, they should bring their money into court, or tender it, or at least make it certain that the defendant can have it. Here no money is tendered; no security offered. If a depreciation of the property takes place, the whole loss may fall on the defendant, and he has already offered to make a discount if the plaintiff will redeem, and to give an extension of time if security is given for the payment of the debt. Is it reasonable then to place the holder of the mortgage in a condition to lose a portion of his debt by causing delay, when the property is yielding but little? This ground cannot warrant the injunction.

As to the conduct of the sale, we need only say that the power of sale is a matter of contract, and should not be overthrown by the court. If the defendant exercises his right, and executes the power of sale, he is responsible for good faith, and must use proper care and discretion in the conduct of it. If he is guilty of a breach of trust, he must answer for that hereafter. His pecuniary ability is unquestioned, and the plaintiffs do not contend that there is any want of means to answer for his good conduct.

It is said that the advertisements of the sale are insufficient. But they seem to be all that the contract between the parties has required. And if the plaintiffs consider the three newspapers which contain the notice of sale insufficient, they can easily advertise in other papers, and describe the property as fully as they please.

Under the terms of this contract the court will not order the creditor to divide up the mortgaged estate, or to sell it

by retail, or in parcels. The defendant is bound to use good faith, and to endeavor to sell the estate for the most it will bring. He acts on his own responsibility, and the court will not now express either approbation or disapprobation of the course he proposes to pursue. He acts under his contract, and must do his duty to all concerned. I shall order the injunction to be dissolved.

*Ellis Ames* and *B. Sanford*, for petitioners.

*B. R. Curtis*, for respondent.

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*District Court of the United States. District of Maine.*

*In Admiralty. March, 1860.*

THE LUCY ANNE.

A court of admiralty has jurisdiction to decree the bounty allowed to persons employed in the cod fishery, and a claim for this may be united with a claim for an account of the fish taken during the voyages.

A custom is obligatory on the parties only when the law does not provide for the case.

When a condition precedent is annexed to a gift, that cannot be repudiated and the gratuity received unconditionally.

The reasonableness and equity of an agreement between owners and seamen will always be examined by a court of admiralty.

This case originated in the following state of facts. The complainant, Philip Rines, a minor, had been engaged in the service of the schooner *Lucy Anne*, of Southport, District of Wiscasset, during the cod-fishing season of 1859. The season embraced two voyages, one in hand-line fishing, the other in a trolling voyage. After the completion of the second voyage, Rines left with the master's consent, who did not settle up his wages. The terms of service and compensation were embraced in the articles of agreement, usual in this district, the substance of which is given in the opinion of the court. After the sale of the fish, the master, being at Wiscasset, (the residence of Rines,) called him aside and exhibited an account made up of various items of charges for supplies, outfits, and deductions for absence, extra help, etc., absorbing, or nearly absorbing, all his earnings from his catch of fish. No allowance of his share of five eighths of the bounty was reckoned into the proceeds of the voyage.

The father thereupon founded a libel on the facts, which was filed, and process issued against the vessel, which was duly arrested, and in the course of the trial the rights of fishermen, in the premises, to a full and just account of the fish taken, and to the entire value of the same, and to each man's share of five eighths of the allowance of bounty received by the owners of the vessel, came up for settlement and adjudication on the principles of law and equity, as administered in courts of admiralty and maritime jurisdiction.

This case was elaborately argued by *Sewall* and *Willis* for the libellant, and by *Shepley* and *Dana* for the respondents, and on term day an opinion was delivered by

WARE, J.—This libel is filed by Philip Rines, a minor, by his father, and next friend, against the fishing schooner Lucy Anne, of about thirty-one tons burden, claiming his share of the bounty, and an account of the fish taken in two trips in the season of 1859. No question has been made as to his engagement or the time of his service. The defence relied on is, first, that he has been fully paid, for which his owners have his receipt; and, secondly, misbehavior, negligence, and desertion, during the voyage.

But a question, in its nature preliminary, is made, that a court of admiralty has no jurisdiction over the question of bounty, and that this can be recovered only in a suit at common law. The provision of the law is, that there shall be paid to every vessel of thirty tons' burden, and over, at the rate of four dollars a ton, that shall be engaged in the cod fishery during the season, three eighths of which shall belong to the owner, "and the other five eighths thereof shall be divided by him, or his agent, to and among the several fishermen who shall have been employed in such vessel during the season aforesaid, or part thereof, as the case may be, in such proportions as the fish they shall have respectively taken bears to the whole quantity of fish taken on board such vessel during such season."

The consideration of this allowance is essentially and exclusively maritime. It is measured to the men in proportion to the fish they have taken, and must be considered like the double pay allowed to seamen when they are put on short allowance, and the three months' pay allowed when discharged in a foreign port, as additional wages. It is a gratuity offered to the men to engage in this laborious, and

not usually lucrative service, forming a nursery and school for seamen, who are always ready to engage in the public service when they are wanted. The law does not, indeed, say that they may recover it in a libel as wages; but it treats them as seamen, giving the same remedies against them for enforcing their contract, and subjecting them to the same penalties. The allowance is paid to the owner, and he is bound to pay it over to the men. I can see no room for doubt that a claim for the bounty, and for an account of the fish taken in the voyage, may be united in the same libel. They relate to the same subject matter, and if the bounty is to be considered an additional compensation, are both of admiralty jurisdiction.

The first objection to the libel, on its merits, is the settlement made in January, and the receipt in full of Philip of that date. This settlement was on the basis of the custom of Southport, and assumes the validity of that custom. Waiving the question of the reasonableness of that settlement,—and as it departed from the law, whether it was explained to the libellant, and fully understood by him: whether he gave up any of his legal rights without receiving a full consideration therefor, which as a fisherman having the rights of a seaman, a court of admiralty will always look into;—setting aside these questions, it is manifest that the case brings up the binding force of that custom. The settlement refers to this, and this has been the principal question which has been argued. It is, in fact, to settle this question that the suit is prosecuted, for the amount in controversy would be scarcely worth the expense of litigation unless this question lay at its bottom. But this is important, both as a legal question and in its practical consequences, and deserves a deliberate consideration.

Custom certainly may have the force of law, and be equally binding, when it is not expressly referred to in the contract. In all civilized and uncivilized countries a large portion of the transactions between man and man is left to be regulated by usage. And this usage is binding on the parties because they make their engagements in reference to it, and it comes in and silently makes part of the contract. This is the case when no reference is made to the custom; and it is still more so when the parties themselves refer to it. But this is only so when the legislature has not expressed its will on the subject, or when, as is not

uncommon, the general rule is established, that the parties are expressly allowed to derogate from the law by their particular contracts. But when a departure from the rule of law is not expressly or impliedly allowed, the law prevails; and this for the best reason, because every party is supposed to know the law and make this a part of his contract, unless he expressly provides otherwise. Seamen, however, have at all times, from their habitual carelessness and improvidence, from their own ignorance and the superior knowledge and the habits of business of those who deal with them, been held to be peculiarly entitled to the protection of courts of justice. They have been treated in some manner as minors, incapable of waiving their legal rights without these are fully explained at the time, and a full and adequate consideration is made for them. If the case rested here a duty might be imposed on this court to see that a full equivalent for the bounty was allowed by the custom of Southport.

But the question in this case is not merely whether custom can do away with an express provision of a statute, but whether a grant of the legislature, supported by a consideration can be abrogated by a custom. This grant of a bounty is made only to vessels qualified by law to carry on the cod fisheries. The United States alone can give that qualification, and this would be a sufficient consideration to uphold a contract in any case. The ship cannot receive the bounty without the requisite qualification. This, then, is a gratuity to the vessel, and it is given on the express condition that five eighths shall go to the fishermen, and to this extent it is a gratuity to them, and it is given them on condition that they incur themselves to this hardy service. If they should choose to waive their rights, they could not do it without the consent of the United States. The donor may annex such conditions to his bounty as he pleases; nor at least, when he has an interest in his liberality, can the beneficiary repudiate the conditions without the consent of the donor. He cannot take that as a free gift to which a condition precedent is annexed. Independent of the last clause of the contract, by which the parties reserve to themselves all the benefits to which they are entitled under the act for the government of persons employed in the fisheries, I can entertain no doubt that the custom is void.

Besides, so long had the practice prevailed in this district of settling with the fishermen without paying to them any part of the bounty, that from the whole evidence it is evident that they were uncertain whether any part was due to them. The libellant would be entitled to relief on common principles, taking into view his occupation, on the ground of a surprise. There must be a decree for the bounty. Whether the custom of Southport is a beneficial one or not, is a question into which the court cannot examine. The United States have a perfect right to affix such conditions to their gratuities as they please.

The next question is, To what part of the bounty is Rines entitled? Five eighths is to be distributed among the men, respectively, in the proportion which the number of fish taken by each bears to the whole taken on board the vessel. In the first trip there is no controversy. The fish were taken with lines, and the fish of each man were put into a kid by themselves, and faithfully counted out at night. The entry of them at each night was made on a slate in the presence of the whole crew, so that every man had an opportunity to see that his fish were rightly counted; and the week's work was on Saturday night transferred to a book in ink. This I think a sufficient entry. In this trip, according to the account, Rines took 1,337 fish.

In the second trip the fish were taken by a troll. This is a new mode of fishing, with which all the men were equally inexperienced. A troll, as described by the witnesses, is a long rope extended on the water for many fathoms with baited hooks attached to it, about three or four feet apart. This is sunk in the water and occasionally drawn up with the fish on the hooks. The whole crew is employed in the management of the troll, and the fish come up in a mass. Though the troll shows what the whole have taken, the share of each individual cannot appear in this mode of fishing. But the law requires the bounty to be distributed among the crew in proportion to the amount taken by each individual. When a part of the time is spent in troll fishing, and a part in taking with lines, I know of no more equitable way of dividing the troll than to allow to each man a proportion equal to that which he has taken with the line. This may be considered as indicating a fair average of the efficiency of each man.

The whole number of fish taken on the first trip with lines was 7,958, of which, Rines took 1,337. That taken

by troll fishing was 4,000. This would make Rines's share 670, and added to 1,337 will make 2,007. His share of the bounty will be \$13.06.

The libellant also demands his share of the fish. I know of no reason for doubting the account of John Cameron of the proceeds of the sale of the fish, and that the proper deductions were made of salt, the expenses of cure, freight, and commissions. According to this account, the net proceeds of the sale of the fishermen's part were \$464.35. Of this, Rines's share was \$78.93, and to this add his share of the bounty, \$13.06, and we have \$91.99 as the balance due from the owners.

Against this demand, the owners have filed their account of offsets of \$70.33.

This libel is brought by Philip, a minor, by his father and next friend, and there can be received in offsets only what went to Philip, or what he authorized to be charged against him. What was for Moses Rines, the father, cannot be charged against Philip. It is true that the father might appropriate the earnings of his son to himself. He might also leave the earnings of the child to him, and by the son's bringing the libel himself, with the authority of the father, must be considered as a sufficient proof of emancipation. We may strike out the charge in Lincoln's bill of \$9.23. With respect to Lenox's, though I think that there is some doubt as to part of the charge, my opinion is that, as Philip gave his order for the payment, it ought to be allowed. There is a charge of six days' work on board the vessel in Rines's absence. According to the custom under which the contract was made, certain duties on board the vessel were to be performed by the men. But of such a charge as this there ought to be some better evidence than a simple charge in a pencil account, or the testimony of a witness. The absence of a seaman should be noted in the log-book at the time, both to show that there was a delinquency on the part of the seaman, and that it was such a one as in the opinion of the master or skipper ought to be noticed. Independent of this, Russel was from the same town, and was absent at the same time, and about the same number of days with Philip; he was charged with but one day's labor for his absence. As he was one of the crew, and had the same labors to perform, if I allow against Philip the same, I think enough will be allowed.

*Decree for \$29.51, and costs.*

*Supreme Judicial Court for the Commonwealth.*

*Suffolk County. October, 1859.*

DAVID METCALF *v.* WILLIAM F. WELD, ET AL. GRAFTON  
POCKETNET *v.* SAME. THOMAS SMITH *v.* SAME.

*Evidence — Port custom — Advance wages to seamen.*

Under a written contract made between seamen and shipowners, whereby the seamen were entitled to receive a stipulated sum as advance wages, parol evidence of a custom of a port as to the mode of payment will not be admitted to control or vary such written contract.

A custom which allows a payment of advance wages by the owners to their own agent, with a payment by him to some boarding-house keeper, with whom the seaman must settle whether he be under legal obligation to him or not, is neither a reasonable nor a proper custom.

The above actions were brought in the Superior Court, and were heard by the court alone, a jury trial having been waived under the act of 1857, ch. 267. They were respectively actions of contract brought to recover a balance alleged to be due on a written contract for wages to the plaintiffs as seamen on board the brig Laurilla of which the defendants were owners. The defence was payment.

The three causes involved the same issues and depended on the same evidence, and were heard together. The defendant offered evidence tending to show that it was the custom of the port of Boston, where the plaintiffs were shipped, for the owners to obtain their seamen through a shipping agent; and to pay the advance wages agreed upon in the shipping articles to such shipping agent; that such shipping agent pays the same to the boarding-house keeper who brings the seamen to him, and the boarding-house keeper pays or accounts for the same to the seamen. It was shown that the money in the present instance was not paid by the defendants to the shipping agent at the time of shipment, but was charged against the defendants by the shipping agent on his own books, and the amount, together with his own charges, was paid to the shipping agent on a subsequent settlement of defendants' accounts with him.

And it was also shown that the plaintiffs in this case knew of said custom, and that the defendants according to said custom paid, in the manner above set forth, to the shipping agent who shipped the plaintiffs the sum of twenty

dollars each, being the advance wages agreed upon in the shipping articles signed by the plaintiffs.

The plaintiffs objected to the above evidence as incompetent, and contended that the written contract excluded parol evidence of such custom, and objected that the same, if proved, would be an illegal and unreasonable custom, and contrary to the policy of the law. But the court overruled the objections and admitted the evidence.

The presiding justice in the Superior Court being satisfied that said custom existed, that it was known to both parties, that the contract was made with reference to and under it, and that the defendants had paid the advance wages under it to the shipping agent, ruled that the custom was a reasonable and lawful one, and that the defence of payment was sustained, and gave judgment for the defendant in each of said cases.

HOAR, J. Three questions arise upon the bill of exceptions:—

1. Was the payment made by the defendants of the advance wages due to the plaintiffs in these actions the proper subject of a "custom" of the port of Boston?

2. Was the custom proved at the trial a reasonable custom?

3. Was the payment proved to have been made according to the custom? A negative answer to either of these questions would require the judgment of the court below to be set aside, and a new trial granted; and we are of the opinion that neither can be answered affirmatively.

1. The seamen made a written contract directly with the owners. By the terms of that contract they were entitled to receive a stipulated sum as advance wages. The custom relied on in the defence, is a custom for the owners to pay this advance to their shipping agent, who is employed by them to procure a crew, and for him in his turn to pay it to the boarding-house keeper who brings the seamen to him. It is not a question of the meaning of terms in a contract which have a meaning peculiar to the port of Boston, known to the contracting parties. The contract is intelligible and complete in itself. It obliges the defendant to pay, and entitles the plaintiffs to receive, a certain sum of money at a certain time. Under such a contract, we do not think the mode of payment is the proper subject of a custom, and no authority has been cited in support of such

a proposition. It would amount to a custom of seamen to employ a certain class of agents; a custom for the owners to transfer the direct personal responsibility resting upon them to another, and perhaps an irresponsible party. There are many usages of trade which have nothing to do with the contracts of parties, and which cannot be set up to modify or control them. It is very customary for merchants to pay their debts by checks upon a bank, and this may be very well known to persons who deal with them, and yet no one is bound to receive a check in discharge of a promise to pay money. It may be a custom in some kinds of business to pay workmen in orders for goods; or in goods kept for sale by their employer: or not to pay wages punctually at the time they are due; and the fears or necessities of the laborer may induce him to yield to the custom, and accept payment in a manner or at a time convenient to the employer; but it would hardly be contended that such a custom could be regarded in determining the legal effect of a written agreement. We fear it would not be difficult to prove a custom in many ports to defraud and impose upon seamen in various ways; a custom to subject their persons and property to a kind and degree of control which has its origin only in their ignorance and vices; but these are not the customs which give an interpretation to their contracts.

2. But if there could be a custom respecting the manner of payment of the plaintiffs' wages, we do not consider the custom proved in these cases a reasonable or proper custom. It is a custom for one of the contracting parties to put himself under the tutelage or guardianship of a particular class of men, and interferes with his right to the direct control and enjoyment of the fruits of his own labor. It seems to require that the sailor should be in the charge of some boarding-house keeper; and either be in debt to him, or bound to deal with him for the future. Unfortunately this is too often the actual fact. The power which the keepers of boarding-houses for seamen practically exercise over their customers is liable to great abuse, and we cannot think it wise or salutary that it should receive any extension or encouragement. A custom is not reasonable which allows a payment by the owners to their own agent, with a payment by him to some boarding-house keeper to whom the sailor is under no legal obligation, and

may not choose to constitute and trust as his agent. A principle nearly analogous was applied in the case of *Bowen v. Stoddard*, 10 Met. 381.

3. But whatever the nature of the custom, the evidence in the cases before us did not show that it had been complied with. The money was not even paid by the owners to the shipping agents at the time it was due, but was charged by him in account. It does not appear that the plaintiffs had any relations to a boarding-house keeper, or that the advance wages have ever been paid to any one for their use. If any boarding-house keeper, authorized by them to receive the money, had actually received it, so that it had gone in any manner to their use, the defence might have been placed upon the ground of agency. But it certainly cannot be maintained that the defendants can discharge themselves by a mere transfer of their obligation to their own agent.

*Exceptions sustained.*

*C. G. Thomas and J. C. Wyman*, for plaintiffs.

*J. A. Andrew*, for defendants.

*Suffolk County, January Term, 1860.*

COMMONWEALTH *v.* BARTHOLOMEW FAGAN.

*Indictment — Interlineations — Motion to quash.*

This was a prosecution for forgery. A verdict of guilty having been found, the defendant moved in arrest of judgment upon the ground that the indictment bore marks of erasures, blots, and interlineations, which not being explained by any matter attached, might be presumed to have been made after the foreman of the grand jury had signed the indictment. The motion was overruled by the Judge of the Superior Court.

Rescript and brief statement of the grounds of the decision by

BIGELOW, J.—The indictment having been handed by the foreman of the grand jury to the clerk, and placed on file, the presumption is that the interlineations were in the indictment when presented. In case of interlineations or alterations in the indictment, which render it obscure or unintelligible, or which may lead to the inference that it has been improperly altered, the remedy therefor is

by motion to quash, made to the court in which it is found and presented. The interlineations in the present case furnish no valid ground for the motion in arrest of judgment.

*Exceptions overruled.*

*Attorney General*, for the Commonwealth.

*B. F. Russell*, for the defendant.

COMMONWEALTH v. HARTFORD AND NEW HAVEN RAILROAD COMPANY.

*Obstructing a highway — Railroad tracks — Nuisance.*

This was an indictment for obstructing State Street, in Springfield, by laying a track across it, and putting large quantities of earth upon it, in 1853, and continuing the track and earth thereon till the time of finding the indictment in 1858.

It appeared that State Street was laid out in 1832, with a grade running down to a wharf where passengers were landed, and a considerable freighting business was done. In 1845 the defendants, under their charter, laid a track across State Street two rods in width, and notified the selectmen of the manner in which the railroad was to be built across State Street. In 1853 another track was laid to the west of the first track, between it and the river, and upon the descending grade, which made it necessary to raise the level of the street under this new track, and also to place earth on the road beyond. The effect of this was to make the grade of State Street steeper than it was before.

Witnesses for the government testified that this made the street inconvenient, and almost impassable to the heavy teams which formerly had transported merchandise from the wharf.

The defendants prayed the court to rule that, if the defendants in making their westerly track across State Street, within their chartered limits and where State Street descended towards the river, found it necessary to make that track upon the same level with their eastern track, they had a right so to do, notwithstanding it thereby became necessary to raise the surface of State Street under the westerly track considerably higher than it was before, and made the grade of State Street, beyond the westerly track,

steeper than before. And if they put State Street in all other respects in good repair, so as to be safe and convenient for travellers, the fact that they left the grade considerably steeper than it was before, so that teams could not draw so heavy loads up the grade as they could otherwise have done, is not sufficient to constitute their acts a nuisance.

But the court declined to give this instruction, and submitted the case to the jury under the following ruling. Railroad companies are prohibited by law from making their roads where they cross a highway so as to obstruct the highway, except in a particular mode, by the permission of the selectmen, and subject to the decision of the county commissioners. Any portion of a railroad constructed across a highway, without the permission of the selectmen or the order of the county commissioners directing its mode of crossing, and in such a manner as to prevent or substantially interfere with the passage of carriages with loads of a proper and reasonable weight, such as are usually carried upon public highways, would be a nuisance, for the erection and maintenance of which the corporation might be indicted and convicted. The facts in this case do not furnish any authority or justification to the defendants in their obstructing the highway.

A verdict of guilty was rendered, and the defendants excepted.

Rescript and brief statement of the grounds of the decision by

SHAW, C. J.—The instructions prayed for by the defendants ought to have been given.

*Exceptions sustained, and new trial ordered.*

*Attorney General*, for the government.

*Chapman and Chamberlain*, for the defendants.

JOHN COLE, ET AL. *v.* THE UNION MUTUAL INSURANCE CO.  
SAME *v.* THE COMMERCIAL MUTUAL INSURANCE CO.

*Policy of insurance — “At sea” — The Chincha Islands a port.*

These were actions of contract founded on policies of insurance, whereby J. H. Bartlett & Sons were insured certain sums on the ship William Penn for one year from the 20th May, 1854, at noon. The policies contained this clause: “If the ship is at sea at the end of the year, then

to continue at *pro rata* premium until she arrive at her port of destination."

From the agreed statement of facts it appeared that the William Penn sailed from New York July 18, 1854, to San Francisco, and thence to Callao, where she arrived March 25, 1855. She cleared from Callao for the United States, with liberty to stop at the Chincha Islands for a cargo of guano, and sailing April 1, 1855, arrived at the Chinchas April 7, 1855. Here she received a cargo, and sailed immediately for the United States, June 4, 1855, and while pursuing her voyage, was, on September 30, 1855, totally destroyed by perils of the sea.

Rescript and brief statement of the grounds of the decision by

DEWEY, J.—The policy had expired before the loss occurred.

*Judgment for the defendants.*

*Thaxter and Bartlett, for the plaintiffs.*

*Clifford, for the defendants.*

JEREMY MANSUR, ET AL. v. NEW ENGLAND MARINE  
INSURANCE CO.

*Policy of insurance — What delivery of goods will discharge underwriters.*

This action was submitted to the decision of the whole court upon the following agreed statement of facts.

A quantity of provisions were shipped by the plaintiffs on board the steamboat "Landis," from Indianapolis to New Orleans, and on board the ship "Middlesex," from New Orleans to Boston, which provisions, as appears by the policy, were duly insured by the defendants, until they arrived and were landed in Boston. The Middlesex arrived safely at Battery Wharf, in Boston, with her cargo, April 6, 1855, and on April 27 Battery Wharf took fire, and several ships were destroyed, but the Middlesex was hauled out and saved. About half an hour before the fire broke out, the persons employed in discharging the cargo, having been before employed in getting out of the ship other parts of her cargo, commenced taking from the ship the plaintiff's provisions, although the consignee of the plaintiffs had no knowledge that they had so commenced, (except the general notice that the vessel had arrived at Battery Wharf, and was about to discharge her cargo,) and

at the time of the fire were in the act of taking out the same, and had already taken out one hundred and seven tierces lard, forty-nine tierces ham, and three barrels pork, when the fire spread so rapidly, and approached so near the ship, that the ship with the remainder of the plaintiff's goods was with great difficulty saved. There was not time, after the fire was discovered, to move the articles which had been taken from the ship either back into the ship, or away from the wharf, and they were burned and destroyed. The defendants had due notice of the loss.

The claim of the plaintiffs was for a partial loss, by reason of the burning of the goods upon the wharf.

Rescript and brief statement of the grounds of the decision by

MERRICK, J.—The court are of opinion that the underwriters were discharged in respect to each parcel of the provisions insured, as soon as it was duly discharged from the ship, and landed on Battery Wharf.

*Judgment for the defendants.*

*Beard and Nickerson, and Sewall and Angell, for the plaintiffs.*

*Choate and Bell, for the defendants.*

RICHARD HEALY v. THOMAS TRANT.

*Lease — Underletting — Act 1855,<sup>1</sup> ch. 495, §§ 1, 3.*

This was a writ of review. In the original action, which was a process brought by Trant against Healy in the Justice Court, under the provisions of ch. 104 of the Rev. Sts. (ch. 137 Gen. Sts.), to recover possession of the premises described below, Trant recovered judgment.

At the trial in review, it appeared in evidence that Healy had a written lease of premises in North Street, Boston, from one Garrett, for five years, from April 1, 1854, at a rent of \$400 per annum, payable quarterly, in advance, in

<sup>1</sup> This statute provides, section 1, "All buildings, places, or tenements, used as houses of ill-fame, resorted to for prostitution, lewdness, or for illegal gaming, or used for the illegal sale or keeping of intoxicating liquors, are hereby declared to be common nuisances, and are to be regarded and treated as such;" and,

Sec. 3, "If any person, being a tenant or occupant, under any lawful title, of any building or tenement not owned by him, shall use said premises or any part thereof for any of the purposes enumerated in the first section of this act, such use shall annul and make void the lease or other title under which said occupant holds, and without any act of the owner shall cause to revert and vest in him the right of possession thereof; and said owner may make immediate entry, without process of law, upon the premises, or he may avail himself of the remedy provided in the 104th ch. of the Rev. Sts.; and the provisions of said chapter shall be deemed to extend to all such cases."

which the lessee covenanted not to assign the lease, nor lease the premises or any part thereof.

In September, 1857, Garrett sold and conveyed the premises, subject to this lease, to the defendant. On October 11, 1857, Healy paid Trant \$100, being the rent from October 1, 1857, to January 1, 1858. Early in October, Healy leased the premises to one Dowdican, who underlet to one Eckles, who kept a bar, and sold intoxicating liquors without license, and also kept a house of ill-fame. In the latter part of October, 1857, Trant entered and took possession. Healy subsequently regained possession, and thereupon, in November, 1857, Trant commenced the original process in the Justice's Court, and regained possession of the premises. The plaintiff in review requested the court to rule, that, where under the Act of 1855, the charge is, not that the person holding the lease has set up a nuisance, but that an under-tenant has done so, though the lease of that under-tenant may be thereby avoided, yet the lease of the original tenant is not thereby avoided, unless it be shown that such nuisance was established and existed through his agency, either by direct participation in the establishment, or by allowing its continuance after notice and knowledge. But the court instructed the jury that, if Healy, by himself or through his sub-tenants, used the premises, or any part of them, as a house of ill-fame, or for the illegal sale or keeping of intoxicating liquors, his lease was thereby avoided, and the defendant could maintain and avail himself of the process provided by the 104th ch. Rev. Sts., and was entitled to a verdict.

A verdict was rendered for the defendant.

Rescript and brief statement of the grounds of the decision by

BIGELOW, J.—The court are of opinion, that the estate of the plaintiff in review, under his lease for the term of five years, was not forfeited by the use of the premises by his sub-lessee, or under-tenant, for the unlawful purposes specified in St. 1855, ch. 405, § 1.

*Exceptions sustained.*

*Searle*, for the plaintiff.

*Dyer*, for the defendant.

## JOSEPH BALDWIN v. JOHN B. HILDRETH.

*Declaration in slander — Practice Act — "Accused."*

This was an action of tort. The following was the declaration: "And the plaintiff says the defendant publicly, falsely, and maliciously accused the plaintiff of the crime of larceny, in words substantially as follows: 'He is a thief.' To the damage of the plaintiff, as he says, the sum of one thousand dollars."

The defendant demurred to this declaration on the grounds that the slanderous words were not alleged as spoken of or concerning the plaintiff, or as spoken by the defendant, or by any person whomsoever.

The demurrer was overruled by the court, and exceptions were taken by the defendant.

Rescript and brief statement of the grounds of the decision

PER CURIAM.—Brief as a declaration in slander may now be, it must set forth slanderous words, spoken, written, or published by defendant, directly about or respecting the plaintiff, and by "means thereof" accusing the plaintiff, or imputing to him a particular offence. The slander consists in speaking words "about" or "respecting," or what is the familiar and technical language, "of and concerning" the plaintiff. The word "accused" the plaintiff by certain words, is not equivalent to an averment that he spoke them of the plaintiff. Even the form prescribed in the Practice Act, St. 1852, ch. 312, § 91, has the words publicly accused the plaintiff, etc., "by words spoken of the plaintiff," substantially as follows.

*Exceptions sustained, demurrer sustained, and case remanded to the Superior Court, with leave to the plaintiff to amend, on payment of costs to the present time; in failure of which, judgment for the defendant.*

*Story and May, for the plaintiff.*

*Park and Russ, for the defendant.*

## WILLIAM R. SMITH v. BRACKETT JEWELL.

*Bond — Demand upon obligors, before suit brought for condition broken — Proof of refusal necessary previous to suit.*

This was an action of contract, on a bond to dissolve an attachment, signed by the defendant as surety. The defeasance of the bond provided that, "... if Robert

Jewell and Brackett Jewell shall deliver up to the said plaintiff or his assigns the above-described property within thirty days of the time of rendition of judgment, . . . free from expense to the said plaintiff, and on demand after the rendition of judgment, then the above-written obligation to be void. . . ." The defence was, that no demand was made on the defendant before the commencement of this action, to deliver the property named in the bond to the plaintiff, and that the defendant was the owner, and, as owner, was entitled to the possession of the said property, under a mortgage mentioned in the bond.

The plaintiff asked the court to instruct the jury that no demand was necessary to be made on the defendant for the property described in the bond before the commencement of this action; but that a failure to deliver it within thirty days after the rendition of judgment, mentioned in said bond, was a breach of the condition of the bond. But the court refused so to instruct the jury, but did instruct them, that the plaintiff to maintain his action must prove a demand upon the obligors in the bond, previous to the commencement of the suit; that a demand upon one of the joint and several obligors would be, in effect, a demand upon both; and that the plaintiff must also prove a refusal to deliver by the obligors, or one of them, upon such demand. The plaintiff also asked the court to instruct the jury that if they found the mortgage to be a valid one, the plaintiff would be entitled to a verdict for the difference between the value of the mortgage and the sum named in the bond. But the court instructed them that, if they found for the plaintiff, their verdict should be for the penalty of the bond, and the damage should be assessed subsequently by the court or jury; also, that if they found the mortgage to be a valid one, and that the defendant was thereunder in possession of the property at the time of the attachment thereof, referred to in said bond, his refusal to deliver the said property upon a demand, would not be a breach of the condition of the bond.

A verdict was rendered for the defendant.

Before the full court all points of defence were waived, except that a demand upon one or more of the obligors, and a refusal by them, was necessary to be proved in order that the plaintiff should maintain his suit.

Rescript, and brief statement of the grounds of the decision,

PER CURIAM.—The rulings of the court on the construction of the bond were right upon both points.

*Exceptions overruled.*

A. Abbott, for the plaintiff.

T. P. Proctor, for the defendant.

*Essex County.*

PATIENCE CURRIER v. JOSEPH GALE.

*Evidence — Distinction between declarations of deceased tenants and declarations of those living.*

This was an action of tort for breaking and entering the plaintiff's close. To prove her case the plaintiff put in evidence a deed of conveyance of the close to her ancestor, and introduced evidence tending to show that she was rightfully in possession. The defendant pleaded in justification, soil and freehold in his wife, under whom he entered and did the act complained of, and, to maintain his defence, relied upon two grounds, title by deed and title by adverse possession. In order to establish the title by adverse possession of twenty years, the defendant testified that from about 1825, for a period of twelve or fifteen years, one Webster occupied the *locus* as tenant to Jacob R. Currier, one of the defendant's grantors. He was then asked by his counsel what Webster had said during the time of his occupation, for the purpose of showing that he occupied as tenant to Jacob R. Currier, and adversely to the plaintiff. But this evidence being objected to was rejected by the court. It also appeared that, subsequently to the occupation of Webster, one Bartlett occupied the *locus*, and the defendant offered the declarations of Bartlett, during the time of his occupation, as evidence that he held under said Jacob R. Currier. This was also rejected by the court.

A verdict was found for the plaintiff.

Rescript, and brief statement of the grounds of the decision, by

DEWEY, J.—The only objection to sustaining the verdict is that of the rejection of the evidence offered by the defendant, of the declarations of Webster and Bartlett.

The rejection seems to have been on general grounds,

disregarding any distinction between declarations of deceased tenants and cases where the tenants are still living.

If these declarations are offered as the declarations of deceased tenants, made upon the land during their occupation, they may be competent.

On the other hand, if offered as the declarations of persons now alive, they ought to be rejected.

As the rejection was general, and not upon the ground that Webster and Bartlett were still living, the court are of opinion that the verdict should be set aside, and a new trial had in the Superior Court.

*Verdict set aside, and a new trial ordered.*

*Lamson, for the plaintiff.*

*Binney, for the defendant.*

*Court of Common Pleas of Marion County, Ohio.*

*November Term, 1859.*

**THE ATLANTIC AND GREAT WESTERN RAILROAD COMPANY  
v. JAMES BROWN.**

A remedial statute, referring to "persons," "plaintiffs," "inhabitants," and the like, *eo nomine*, will be held to include "corporations," unless there be some express or implied limitation of the meaning of such terms.

A corporation being an artificial person must have a residence which, in the absence of any law declaring it, will be at its principal business office.

Under the Ohio Civil Code, § 543, a corporation of this State is required to give security for costs, as a non-resident, when commencing an action in a county where the principal business office of the corporation is not located.

Civil action to recover money. The plaintiff is a corporation, organized under the General Railroad Act of May 1, 1852. 3 Curwen, 1877. The corporation has no business office or place where process can be served in Marion county. No part of plaintiff's road is finished in this county, though the corporation has procured the right of way, and partly constructed the embankments and excavations for a track. The principal business office is in Mansfield, Richland county. Many of the stockholders reside in Marion, but the officers reside in other counties. The suit was commenced without security for costs.

Motion for rule on plaintiff to put in security for costs.

*B. R. Durfee, for motion.*

*J. Bartram, contra.*

BY THE COURT. WM. LAWRENCE, *Judge*. The Code, section 543, provides that "in all cases in which the *plaintiff* is a *non-resident of the county* in which the action is to be brought, before commencing such action, the plaintiff must furnish a sufficient surety for costs."

If therefore the plaintiff is a "non-resident," within the meaning of this section, the rule must be granted.

A "non-resident" of the county is one who is not a resident, or, according to Webster, "one who does not reside . . . in the place where official duties require." He is one who cannot be served with process at his residence in the county. Nash. Pl. 21; Wright R. 563; 15 Ohio R. 288, and cases cited, note *b*, to sec. 179 [154] of Voorhies's New York Code, p. 233. I take it to be well settled that when a statute speaks of a "*plaintiff*," or "*person*," or "*inhabitant*," without limitation, express or implied, confining it to *natural persons*, *artificial persons* or corporations will be included. This proposition is now so universally recognized that, without quoting text-writers or opinions of judges at length, I will simply cite a few cases which support it. *Shelby v. Hoffman*, 7 Ohio State R. 450; *Reynolds v. Commissioners Stark Co.* 5 Ohio R. 204; *Louisville and R. Co. v. Letson*, 2 How. 497; *People v. Utica Ins. Co.* 15 Johns. R. 358-382; *Outam Bank v. Bunnell*, 10 Wend. 186; *Sherwood v. Saratoga and Wash. R. R. Co.* 15 Barb. S. C. R. 650, 1 Blackst. Com. 123.

It is equally well settled that corporations "have a local habitation and a name;" that they have a *residence* which is the location of their principal business office. Thus in *Hubbard v. Nat. Prot. Ins. Co.* 11 How. Pr. R. 149, it was decided that "the residence of a corporation created by the laws of this State (New York) is in the county where its general business is transacted and located. The fact that such a corporation has an office in another county where some of their business is done, does not change or affect their residence." To the same effect are *Glazie v. S. C. R. R. Co.* 1 Strobhart, 70; *Allen v. Pacific Ins. Co.* 21 Pick. 257; *Conroe v. Nat. Prot. Ins. Co.* 10 How. Pr. R. 403; *Limerick and Waterford R. R. Co. v. Frazer*, 4 Bing. 394; *Edinburgh and Leith R. R. Co. v. Dawson*, 3 Jurist, 55; *Kilkenny R. R. Co. v. Fielding*, 2 Eng. L. and Eq. R. 388; *Bank U. S. v. McKenzie*, 2 Brockenborough, 395; *Louisville and R. Co. v. Letson*, 2 How. U. S. R. 497; *Crom-*

*well v. Charleston Ins. Co.* 2 Richardson R. 512; *People v. Trustees of Geneva College*, 5 Wend. 211; Seney's Code, p. 74; 1 West. Law Monthly, 698.

I see nothing in the legislation of Ohio to change these general rules. The General Railroad Act, 3 Curwen, 1881, sec. 17, provides that "such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and change the same at pleasure, giving public notice in some newspaper of such establishment or change."

The cases already cited show that the residence of the corporation is not that of its stockholders, for it is an independent artificial person. Nor can it be said that the residence of the corporation is where its property is situated, for the property is not the corporation. The railroad track of a railway corporation is no more *the corporation*, or *its residence*, than a man's *farm* is *the man*, or, necessarily, *his residence*, and we know it is neither. To hold that corporations are endowed with ubiquity would be against all the adjudicated cases, and contrary to reason and expediency. And as they must have some residence which cannot change, as property changes its *locus*, there can be no better rule than that laid down in the books, and recognized by the common understanding of all men, that the corporation is located where its principal business office may be situated. This has been the legislative understanding in Ohio. Thus the tax law of April 13, 1852, sec. 19, requires banking corporations to return their taxable property "to the auditor of the county in which such bank may be situated." The amendatory tax law of March 14, 1853, requires railroad companies to return their property for taxation in the township where it is located, but nothing recognizes these corporations as being located necessarily where their property is. If this were so, the absurd result would follow, that a foreign corporation having property here would have a residence here, and that a bank would reside wherever it had lands, goods, or money on deposit. And if this were so, a bank in Columbus, having for its business money on deposit in Cincinnati, would have a residence there, be subject to make returns for taxation there, and be there liable to be charged as a garnishee. Code, § 200.

In proceeding against a corporation, the process at com-

mon law could only be served on the mayor or head officer. Angell and Ames on Corp. ch. 18, p. 508; 1 Swan Pr. 115; Dunl. Pr. 153; Wilcox Pr. 16. The inconvenience of this practice has led to many enactments in Ohio directing the mode of serving process. In many of the early railroad charters, and in the General Railroad Act of Feb. 11, 1846, sec. 16, (2 Curwen, 1400,) process might be served on the president or secretary, or by copy at the principal office. But as the sheriff could only serve a summons in his county, suits could only be brought in the county where such office was or where the president or secretary might be found. This difficulty was removed by Act of March 21, 1850, (2 Curwen 1538-1597,) which authorized suit in any township along the line of a road, and this has been incorporated into the Code, sec. 49. [See Senate Journal, 1849-50, pp. 192-259.] It is evident from this and other legislative acts that corporations are treated as having a residence at the place of their principal office.

The question of residence is one of importance as it will arise in other forms. Justices' Code, § 28-30; Curwen Statute, 2057. Upon the authorities cited it seems to me impossible to resist the conclusion at which I have arrived.

*Plaintiff is ruled to give security for costs.*

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### MISCELLANEOUS INTELLIGENCE.

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#### RETIREMENT OF CHIEF JUSTICE REDFIELD.

At the opening of the session of the General Term of the Supreme Court of Vermont on Wednesday afternoon, Nov. 16, an interesting ceremony took place. Chief Justice Isaac F. Redfield was about to retire from the dignified position he had long held; and the members of the bar of the whole State, having raised a committee of its members to prepare a farewell address to him, Hon. Lucius B. Peck was selected to prepare and read the address. Shortly after the court came in, Mr. Peck, in an impressive manner, read the following address.

MONTPELIER, Nov. 14, 1860.

*To the Hon. Isaac F. Redfield:—*

SIR: With the close of the present month, in accordance with your own wishes, terminates your judicial life. Before those professional ties are severed which have so long bound us together, the members of the bar from different parts of the State, now in attendance upon the present

term of the Supreme Court, desire to express to you their appreciation of your judicial character and services, their respect and esteem for your private virtues, and their regret that you should have resolved to relinquish those judicial powers which you have for so many years so satisfactorily discharged. The circumstances attending your elevation to the bench, and your continuance there, are alike honorable to yourself and to the people of the State. It is well known that during your whole judicial career, your political views have not been in unison with, but diametrically opposed to, the political sentiments and feelings of a majority of the people. And yet, with a full knowledge of this fact, you were elected by the legislature in 1835, and have been re-elected every succeeding year with great unanimity. Such has been the confidence in you, as an able and upright judge, that political prejudices and partialities have been lost sight of, and you have thus been honored with a seat upon the bench of the highest court in the State for a quarter of a century. The case has no parallel in the history of the country. The people have thus manifested a liberality of sentiment worthy of all praise. Amidst all the political excitements of the last twenty-five years, when the passions of men were inflamed by party contests for power, you have remained intact, quietly and faithfully discharging your public duties, having the respect and esteem of all parties. How far you have discharged those duties to the acceptance of the public, is evinced by your repeated re-elections to the place which you have so long adorned. What higher meed of praise can any man desire? This single fact portrays in language stronger than the partial lips of friendship can utter, your eminent qualifications as judge, and the faithful performance of your public trust.

During your judicial term, and within a few years past, there have arisen questions of the most complex and intricate character, growing out of our various railroad charters, which have called for judicial determination; and it is believed we but speak the sentiment of the whole profession when we say, that so far as judicial action has been had, nowhere have these questions been settled upon more comprehensive, just, and satisfactory grounds than in that tribunal over which you have presided as its chief. It must be the cause of much just pride to yourself and your able coadjutors, that these adjudications command the respect of the bar and of the people, and have advanced the reputation of the court and of the State.

To your learning and untiring industry is the profession and the whole American people indebted for a most useful and excellent treatise on the law of railways. It is matter of surprise how, amidst your arduous judicial duties, you should have found time to write and prepare for the press such a work. Although at the time it must have greatly taxed both your mental and physical powers, your labor has not been performed without its reward. If it has not made you rich in this world's goods, it has advanced your reputation at home and abroad, as an able and accomplished jurist.

It is, however of your judicial character that we would more particularly speak. But no words of ours will extend your fame or increase your reputation. They rest on a more enduring foundation, upon your recorded opinions, spreading over a period of twenty-five years. They will be extant and read when we shall have passed away, and when our language of to-day shall have been buried in the oblivion of the past. We are not unmindful of, and have not forgotten your uniform courtesy and kindness in all our official intercourse with you, nor your promptness and firmness in the discharge of what you believed to be your duty, regardless

of consequences. True, honest courage is as necessary to, and admirable in, the judge as in the soldier. With it, he will conscientiously perform his duty, unawed by popular clamor, and uninfluenced by the power of wealth or station. Without it, he is weak, whatever may be his learning and talents, and there is danger that, at times, the right may be yielded to the wrong.

But we will no longer delay our farewell to you as our respected judge. Our intercourse with you as a public man is soon to terminate; but we indulge the pleasing hope that that pleasant social intercourse which has been so long continued will not be interrupted by your retirement.

And now, once more farewell; and may the remainder of your days be as peaceful and happy as your judicial life has been pure and bright.

LUCIUS B. PECK,  
PEIRPONT ISHAM,  
ANDREW TRACY,

J. D. BRADLEY,  
GEO. F. EDMUNDS,

*Committee.*

#### JUDGE REDFIELD'S REPLY.

GENTLEMEN OF THE BAR: In reply to your flattering address, you may be sure that it gives me sincere and grateful satisfaction to receive such a testimony of your confidence and respect towards me, and especially in regard to my public services. They have indeed been performed under circumstances of very marked peculiarity, to which you have very appropriately alluded. But while my position has been in some respects more trying in consequence of its delicacy, it has been in other respects favorable to the cultivation of those feelings and opinions which are indispensable to judicial impartiality and independence. For while it has left me without any such reliance as those in the majority may safely count upon in those popular prejudices or commotions which will sometimes occur, and are liable to affect the popular estimate of all men and all judges who hold their tenure of office by annual elections, through accident or misfortune, it may be, and without fault or infirmity even, such a support, it is not to be denied, in such case, is always agreeable to the feelings; it has nevertheless compelled me to devote myself with the more perfect single heartedness to the discharge of my public duties; and has at the same time weaned me from all embarrassing interest in the course or the results of mere partisan politics, without in the least diminishing my study of, and my interest in, those great social and moral, not to say religious, problems which lie at the foundation of all true greatness and respect, as well in empires and States as with individuals. And among these I have never allowed myself to feel for a moment that I was at liberty to forget that an abiding and unaffected respect for the law and its regularly constituted ministers, whatever might be my private opinions of the wisdom of the one, or the good character or conduct of the other, must certainly be reckoned. And in this view I have, always and under all circumstances, felt it my duty to study to vindicate all laws, however odious, from that contumely and reproach which the well disposed and truly patriotic will sometimes thoughtlessly heap upon the constitution or the laws of the state or the nation, without reflecting that in so doing they are doing all in their power to destroy that respect for law and order in society which is the only guaranty in free States, against outrage and abuse from the reckless violence of the mob or the assassin on the one hand, or of overbearing and unscrupulous majorities on the other.

I have thus made it my study to do nothing, and to say nothing, calcu-

lated to offend the sensibilities of others, unless from a strict sense of duty, and in vindication of those great moral truths which underlie the very foundations of all domestic, social, and civil institutions, and then not obtrusively or offensively, I trust, but none the less fearlessly.

It has been my greatest study and my highest ambition to deserve the approbation of my brethren of the bar, and at the same time to inspire general confidence and respect for the administration of justice among all classes. For it is, in my judgment, as essential to the stability of the jurisprudence of the State that the bar, and through them the citizens generally, should feel confidence in the fairness and the impartiality and the firmness of judicial administration, as that it should in fact be so. In this view, it is important that we all study to avoid even the appearance of evil. You do me no more than justice in believing that such has always been my sincere desire and honest endeavor. And at this breaking up of relations which have continued through a period longer than the active career of most of even the successful members of the profession, and at the period of retirement from public service, it is the very crown of my recompense, for so many years of most unremitting labor and toil, that I have been able, after deciding so many and important questions affecting so extensive and diverse interests, to have the confidence of believing that I have given general satisfaction. No amount of pecuniary compensation, or even of professional reputation, in my apprehension, bears any comparison to that silent testimonial which comes from the unaffected good feeling of all classes in society, which dates from, and can only be permanently secured in judicial position, by the sincere confidence and respect of the bar.

It was, gentlemen, to your unsolicited confidence and respect, as unexpected as it was grateful to my feelings, that I owed my promotion to the position from which I shall so soon retire. And it has been alone through an abiding confidence in your truth and justice and your undeserved partiality, I sometimes fear, and your respect, that I have been able, through years of perplexing and laborious service, to look forward with some measure of hope and comfort, to the hour of my retirement, now so near at hand. And in all these years it has been my highest ambition and my fondest hope, to be able to make a good end of my responsible and difficult public service. And now I feel like one about to put off a heavy burden, a responsible and exhausting care.

And I confess that it would have been among the most painful feelings of my life, if I had been compelled to leave my judicial position, after so long a term of service, with the apprehension that any general distrust and want of confidence and respect for my public services existed among the profession, who are, in my judgment, the most effectual barriers against wrong and injustice and the surest defence of innocence and right, in all free States. From this you may safely calculate the satisfaction with which I accept your address, as the expression of the sentiments of the profession towards me. And I trust I am not presumptuous in believing that the same sentiments are, to some extent, at least, shared by other classes. It is hardly possible it should be otherwise, when such a feeling exists at the bar.

I reciprocate, sincerely and cordially, the wish that our social and friendly relations may become more social and more friendly as time advances. And now, at parting, I forbear to allude to the changes which have occurred since I opened my first term at this same seat of justice. These are changes both in my associates of the bar and the bench, which have come so quietly as to leave no painful sensation. My relations

were never more pleasant, in both respects, than at the present moment. And still you do me no more than simple justice, in saying that my retirement was voluntarily sought ; and it is accepted with the utmost satisfaction, and all the more, because it comes, as you assure me, and as I therefore believe, with the general regret both of the profession and the people. It is best that it should be so. I would not willingly overstay my welcome. May you all live long, and as life advances may we grow happier and better.

If I have not dwelt upon my many and conscious deficiencies, it has not been from any want of a painful sense of their existence and their importance, but rather from an apprehension that, on such an occasion, it might be regarded as an offence, or at the very least an affectation. If I have not given evidence of such sentiments during my public services, it is now too late to amend my record. And you will allow me to indulge the hope, that if I have, as your address intimates, upon proper occasions, manifested either a manly firmness or a Christian courage, that neither the one nor the other has ever betrayed me into the kindred vices of an unfounded conceit of the wisdom of my own judgment or the infallibility of my opinions. I hope I have always held myself open to conviction, and ready to retract errors and to retrace false steps ; and, above all, to give full opportunity for the revisions and corrections of my mistakes. In short, I believe, gentlemen, you will all accord me the justice of certifying, that when I have decided your cases wrong at the Circuit, as was often the case, of course, I have not superadded the insult and indignity of giving you a garbled or imperfect statement of the facts ; or attempted to shield my own errors by throwing them upon your shoulders. If I have ever done this, in any particular, it has certainly been from weakness or misconception. And while I here crave your indulgence and your pardon for all my manifold and painful errors and deficiencies, there is none I should more keenly feel than the apprehension that I had ever done you injustice in that particular.

And now, gentlemen, to repeat your own expressive language, farewell. I can wish you no better thing at parting present relations, than that all our changes, as they naturally admonish us of the shortness of our stay here, and especially those of us whose life has already advanced towards the lengthening shadows of the evening, may, at the same time, prepare us, with Christian temper and resignation, to accept the lot of our humanity, and to meet, with equanimity, if not with satisfaction, the sundering of all those pleasant relations and intimate ties which bind us to our earthly life, that at the last we may be able to hail the advent of our final change as the first beginning rather than the termination of all these exquisite enjoyments and hopes for which we live, and to the final attainment of which it is meet that we should be willing to accept the necessary conditions of our earthly state, in the change and decay and dissolution both of ourselves and of our relations with others. I trust that in bidding adieu to present relations it may prove but the introduction of those more intimate, and to me, certainly, far less onerous, and therefore more agreeable.

DECISIONS OF THE COURT OF APPEALS OF NEW YORK. — *The Oneida Bank v. The Ontario Bank.*—A draft issued by a banking association, and taking effect by the delivery, but post-dated, is, *it seems*, within the prohibition of the statute (ch. 363 of 1840, § 4) against bills or notes not payable on demand.

The case of *Leavitt v. Palmer* (3 Comst. 19) so far as it holds such a draft void, if within the prohibition, questioned, *per COMSTOCK, Ch. J.*

Assuming such draft to be void, the party who has taken it upon a loan of money to the bank is entitled to the money advanced by him, either upon the basis of the contract of loan, treating that as valid and rejecting the illegal security, or upon a disaffirmance of the contract, as for money had and received.

The right of action is transferred by a sale and indorsement of the draft, although it be held void.

The fact that the draft is transferred to a bank which against the prohibition of the safety fund act (ch. 94 of 1829, §33) discounts it, having less than sixty days to run, at a greater rate of interest than six per cent., is not available to the drawer as a defence against the same liability which might have been enforced by the original holder.

The restriction of the rate of interest is, it seems, designed only for the benefit of the borrower.

On a verdict subject to the opinion of the court, the question is, Who is entitled to judgment upon the facts established? and when the objection has not been taken at the trial, the verdict may be supported upon any theory consistent with the facts, though not suggested by the pleadings.

*Foster v. Beals.*—The written receipt of a mortgagee, the date of which was not proved otherwise than by the writing itself, is not evidence against the assignee of the mortgage subsequent to such date, of a payment by the mortgagor.

The failure to produce the mortgage at the time of receiving a payment with the suggestion of a false reason to excuse it and the insolvency of the mortgagee, held insufficient, as matter of law, to put the mortgagor upon inquiry and charge him with notice that the mortgage has been assigned.

*The People and Solomon S. Hommell v. Silas Saxton.*—Appeal from the Supreme Court. Action in the nature of *quo warranto* to determine the title of the defendant to the office of Clerk of Ulster county, to which, by the certificate of the county canvassers, he had been declared to have been elected by a plurality of the vote, at the general election in November, 1858. Upon the trial before Mr. Justice Wright, at the Ulster circuit, these facts appeared:—

There were three candidates for the office of county clerk, who received nearly all the votes cast, viz: the defendant Saxton, the plaintiff Hommell, and one Cornelius Burhans. It was proved on the part of the defendant that there were six ballots deposited by voters in different election districts, which were rejected by the respective inspectors, on the ground that they contained two names for the office of county clerk. If these ought to have been allowed to the defendant, he was elected. The ballots in question were of this character.

Two of them had Hommell's name printed on the ticket, and the name Silas written at the beginning, and Saxton at the end of the printed name of Hommell, thus—*Silas Solomon L. Homwell Saxton*. On one of them the printed name was not erased at all; on the other the written name, *Silas*, lapped over and upon the printed name, *Solomon*. Upon another, the name *Silas Saxton* was written upon and over the printed letters of Hommell's name, which were not otherwise obliterated or defaced. Another had the name of Burhans printed upon the ticket, with the name *Silas* written before, and *Saxton* after it, thus—*Silas Cornelius Burhans Saxton*.

The judge charged the jury that the decision of the inspector of

election that there were two names on each of those ballots was not conclusive. It was for the jury to say from the evidence whether these ballots, or any of them, designated one name or two names for the office of county clerk, and if they came to the conclusion that any or all of them had but one name for the office of county clerk, then it was also competent for the jury to find from the evidence whether all or any of the ballots were intended for the defendant, and if such was the intention of the voter or voters, to give effect to such intention by allowing the same to the defendant. The plaintiff excepted to this charge. The verdict was for the defendant, and the judgment in his favor having been affirmed at general term, in the third district, the plaintiff appealed to this court.

*Lyman Tremain*, for the appellants.

*E. Cooke*, for the respondent.

WELLS and SELDEN, JJ., delivered opinions in favor of affirming the judgment and discussing at length several exceptions taken at the trial. They are not reported, for the reason that the court, after considering them, put its judgment, all the judges concurring, upon this ground: The intention of the voter is to be inferred, not from evidence given by him of the mental purpose with which he deposited his ballot, or his notions of the legal effect of what it contained or omitted, but by a reasonable construction of his acts. His writing a name upon a ballot in connection with the title of an office, is such a *designation* of the name for that office as to satisfy the statute, although he omits to strike out a name printed upon it in connection with the same office. The writing is to prevail as the highest evidence of his intention. The judge ought to have charged the jury, as a matter of law, that they were bound to find the fact accordingly from the face of the ballot itself. The jury in this case having found in accordance with what would have been a proper direction, the verdict must stand.

*Judgment affirmed.*

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### NOTICES OF NEW PUBLICATIONS.

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AN ESSAY ON PROFESSIONAL ETHICS. BY GEORGE SHARSWOOD.  
Second Edition. Philadelphia: T. & J. W. Johnson & Co. 1860. pp.  
liv. and 158. 12mo.

We welcome this little volume, every word of which we have read with pleasure, and, we hope, not without profit. It discusses the broad subject of professional ethics, and comes from the pen of one who has illustrated in his own life the precepts which he urges upon the attention of others, as well as the rich rewards of eminence in rank, general confidence, and high personal respect which a course of industry, high purpose, and honorable devotion to a noble profession can never fail to win.

Judge Sharswood is familiarly known to the profession by his contributions, from time to time, to the legal literature of the country, and by the learning and ability with which he has illustrated standard works upon law, especially his late edition of Blackstone, which should form a part of every lawyer's library. He is in the constant exercise of habits of investigation and application of legal principles, as a judge of one of the courts of Pennsylvania, in which he has attained an eminent rank among the jurists of our country. And he is, besides, a teacher of the

science of law to young men, as a professor in the University of Pennsylvania.

With these opportunities for observation and reflection, with classical attainments, and an extensive knowledge of history as a liberal science, and a quick and refined moral sense, which has been strengthened and improved by long personal intercourse with the men of culture in the city where he resides, he must be especially qualified to treat of the widely extended relations of legal and professional ethics.

The work before us is the fruit of a mind thus trained and prepared to address itself to the profession, both old and young. And there is not one of these, no matter how many years he may have been engaged in it, who will not find subjects of thought and unqualified approval in this little treatise. It was first published under the title of "A Compend of Lectures on the Aims and Duties of the Profession of the Law, delivered before the Law Class of the University of Pennsylvania." It is now reprinted, under the title that stands at the head of this article, with an addition of an introduction of fifty-four pages, in which the author treats of the relation between human and divine law, the ends and objects of society, the principles and province of legislation, the judicial administration of law, the judiciary as a branch of our free government, the limitation of the legislative and judicial departments of our government by the fundamental law declared in the constitutions, State and general, of our country, and, in one word, of jurisprudence, in its broad and comprehensive scope, as a moral, legal, and political science. Of the connection of the bar with this science, the author thus speaks: "With jurisprudence, lawyers have the most, nay, all to do. The opinion of the bar will make itself heard and respected on the bench. With sound views, their influence for good, in this respect, may well be said to be incalculable. It is, indeed, the noblest faculty of the profession, to counsel the ignorant, defend the weak and oppressed, and to stand forth, on all occasions, as the bulwark of private rights, against the assaults of power, even under the guise of law; but it has still other functions. It is its office to diffuse sound principles among the people, that they may intelligently exercise the controlling power placed in their hands, in the choice of their representatives in the legislature, and of judges, in deciding, as they are often called upon to do, upon the most important changes in the Constitution, and, above, all, in the formation of that public opinion, which may be said, in these times, almost without a figure, to be *ultimate sovereign*."

The body of the work is addressed more especially to young men fitting themselves for the bar, and its opening paragraph is a key to the tone and train of thought of what it contains: "There is, perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary, than that of the law." "The object of this essay," the author states, "is to arrive at some accurate and intelligible rules by which to guide and govern the conduct of professional life." This subject he has followed out in detail, till there is scarce a situation in which a lawyer would be likely to find himself in which a question of duty or professional faith and honor is involved, which is not anticipated in this essay, and in respect to which, valuable rules and hints for his guidance may not be found.

It discusses the relation of the lawyer to the court; to his client, to the profession, and to the public, and the standard of conduct which it maintains is one of uniform excellence and sound discrimination. It treats of a lawyer's course of reading and study, and of the patient diligence and training which is requisite to make a great lawyer. He sketches the rise and condition of the profession in the different stages of

the Roman history, of the rewards and emoluments of the English and American bars for professional services, and pays a passing beautiful tribute to that beau ideal of lawyer, judge, and patriot, Chief Justice Marshall.

But our space only allows us to glance at the contents of this excellent little volume, for which the profession and the public should be grateful. It ought to be read and studied by every student at law, and remembered and acted upon by every lawyer, whatever may be his age, or however eminent his rank in his profession. It only need be added, that, like all law books from the press of this and other leading publishing houses in that city, the work is beautifully printed, and got up with excellent taste.

**THE MARYLAND CODE. PUBLIC GENERAL LAWS and PUBLIC LOCAL LAWS,** compiled by OTHO SCOTT and HIRAM McCULLOUGH, Commissioners; adopted by the legislature of Maryland, January session, 1860: the acts of that session being therewith incorporated: with an index to each article and section, by HENRY C. MACKALL, of the Maryland Bar. By authority of the State of Maryland. 2 vols. octavo. Vol. I. pp. 822; Vol. II. pp. 965. Baltimore: John Murphy & Co., Printers and Publishers, Marble Building, 182 Baltimore Street. 1860.

The code, embraced in the two large volumes before us, and containing the result of seven years of labor, is now presented to the public, and should meet with their hearty approbation. Although, perhaps, of no great practical utility to those who do not reside within the immediate jurisdiction of Maryland, yet it is particularly interesting to us, who have recently been benefited by a like successful effort to simplify the law, and as a specimen of revision it is certainly unsurpassed. The statutes of the several States are becoming so numerous that it is already time for a rearrangement of the laws, and codification has, in Maryland as elsewhere, been of late adopted as a short method for curing those evils and confusions arising from a mixture of common and statute law, and for adapting the whole more nearly to the wants of the people.

The commissioners seem to have profited by the experience of others, and, as far as our observation has carried us, to have arranged the whole work in a more convenient form than usual. The contents of each page at its top, and the separation of General and Local laws into different volumes, especially, attract attention. A most copious index is added, the importance of which can hardly be overestimated.

The words of Mr. Mackall, the editor, furnish us with the principal facts connected with the history of the revision and codification. "The Statutes of Maryland, embracing all the legislation from the first settlement of the State, and covering a period of more than a century and a half, were scattered through more than forty volumes, so that it was difficult and expensive to procure them, and from the numerous supplements, repeals, and reenactments, it was no easy matter to ascertain what was the law. These and other reasons induced a provision in the new constitution, requiring the legislature to appoint commissioners to revise and codify the Acts of Assembly. In pursuance of this provision, the General Assembly, in eighteen hundred and fifty-three, appointed Otho Scott and Hiram McCullough commissioners, and these gentlemen reported the result of their labors to the session of eighteen hundred and sixty. Their report was contained in two volumes; the first comprising all the Public General Laws, in articles and sections, and arranged alphabetically; and the second containing all the Public Local Laws, arranged by counties, in alphabetical order. At the session of eighteen hundred and sixty, the legislature adopted the volumes reported by the commissioners and repealed all the

previous legislation of the State, making these two volumes comprise all the Acts of Assembly in force, and abolishing all not contained in them."

**THE GENERAL COMMERCIAL LAW**, as recognized in the jurisprudence of the United States. By WILLIAM O. BATEMAN, Counsellor at Law. One volume, pp. viii. and 765. Philadelphia: T. & J. W. Johnson & Co., Law Booksellers and Publishers, 535 Chestnut Street. 1860.

Numerous as are the works upon Commercial Law and thoroughly as the subject has already been treated, Mr. Bateman's new work is by no means out of place. The author has not followed precisely the preceding writers on the same subject, nor given us merely old matter presented in a new form; he engages our attention by his originality and somewhat peculiar views on the subject of law writing.

Mr. Bateman tells us that severe analysis is important in handling any topic, and especially the law. From the want of proper care the text-books and reports have now increased beyond all control, and a lawyer at the present day, to possess a tolerably complete library, must have no less than five thousand volumes; but by due discrimination, and elimination of whatever does not immediately affect the subject, the whole learning of the law could be compressed into thirty volumes of ordinary size. In his own language: "A single branch, in consequence of the neglect of the natural order and connection in which it ought to be unfolded, is wrought into an infinite variety of shapes, and so rendered susceptible of being expanded into an infinite number of volumes; . . . and surely, a strictly scientific method is quite as necessary to a clear exposition of law, as is a map to the study of geography, a compass to the navigation of the ocean, or a telescope to the reading of the heavens."

"Yet nothing of late has been more generally neglected by the expositors of the law. In general, it seems as though it were almost a matter of indifference whether they begin at the beginning, in the middle, or at the end of a subject; or whether those principles, which, from their luminous nature, are destined to shed light through all the parts, should be found at the commencement or at the close of a work."

Thus the metaphysics of the law, rather than the material, form the spirit of the work, and facts are drawn rather to illustrate than to prove the principles set forth. The rules which constitute the framework of the subject form by themselves the book, and therefore the reader is given a bird's-eye view of the whole in a few pages, and is both attracted by the logical reasoning and preserved from any confusion arising from an indulgence in the discussion of collateral issues, which certainly has misled many writers. Mr. Bateman contends that as commercial law is coeval with commerce, so the true construction of it rests upon the few well-known rules which are common to all the civilized nations of the world; also in the United States, the courts of the different States are guided by the supreme court of the land, which they constantly recognize; and therefore, to use his own language, "it seemed incumbent on the writer, while constantly referring to the decisions of the local tribunals and to the old common law reports, to erect his work upon the more universal basis of the judgments of that supreme court which every candid mind must admit to be the highest tribunal on earth."

"The aim, however imperfectly attained in the present work, has been to supply the want of an exhaustive exposition of the general law-merchant,—a want which, if principally felt by the student of law, seemed to extend even beyond the profession itself, to the business man, the mercantile world, and the general reader."

**INSOLVENTS IN MASSACHUSETTS.**

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Judge.
		1860.	Returned by
Bemis, Lorenzo	Spencer,	Nov. 12,	Henry Chapin.
Brooks, Samuel	Brighton,	" 28,	Wm. A. Richardson.
Brooks, Sylvanus	Gardner,	" 19,	Henry Chapin.
Brown, Edward	Ipswich,	" 28,	Geo. F. Choate.
Candle, Philip H.	Boston,	" 12,	Isaac Ames.
Cottrell, Asa	Boston,	" 24,	"
Currier, Charles M.	Melrose,	" 26,	Wm. A. Richardson.
Damon, Ebenezer B. (1)	Rowley,	" 28,	Geo. F. Choate.
Davis, Jehiel M. (2)	Boston,	" 20,	Isaac Ames.
Dow, Thomas J.	Pepperell,	October 31,	Wm. A. Richardson.
Eaton, Wm. H.	Worcester,	Nov. 17,	Henry Chapin.
Feeley, Thomas	Cambridge,	" 28,	Wm. A. Richardson.
Fellows, Isaac E.	Chelsea,	" 7,	Isaac Ames.
Field, Samuel G. (3)	Northampton,	" 23,	Samuel F. Lyman.
Flanders, Daniel D. (4)	Haverhill,	October 29,	Geo. F. Choate.
Gould, Willis	Milford,	Nov. 1,	Henry Chapin.
Hayward, Elijah E.	Hadley,	" 3,	Samuel F. Lyman.
Howe, Calvin (4)	Haverhill,	October 29,	Geo. F. Choate.
Keating, John F.	Boston,	Nov. 15,	Isaac Ames.
Kelly, Michael	Roxbury,	" 5,	George White.
Kibby, Jerrod H.	Chelsea,	" 5,	Isaac Ames.
Kingsbury, David	Oxford,	" 19,	Henry Chapin.
Lamson, Wm. H.	Lowell,	" 23,	Wm. A. Richardson.
Lawrence, Frank G.	Boston,	" 20,	Isaac Ames.
Lewis, Albert H. (5)	Malden,	" 8,	"
Lewis, Simeon H. (5)	Boston,	" 8,	"
Little Henry S.	Boston,	" 14,	"
Marden, Edwin P. (2)	Boston,	" 20,	"
Morrison, Daniel, (1)	Rowley,	" 28,	Geo. F. Choate.
Morton, Wm. M. (6)	Lynn,	" 13,	"
Palmer, Joseph A.	Roxbury,	" 26,	George White.
Parrish, John	Boston,	" 24,	Isaac Ames.
Reed, Harvey	Chelsea,	" 17,	"
Richards, Eben. W. (6)	Lynn,	" 13,	Geo. F. Choate.
Russ, Charles E.	Cambridge,	" 2,	Wm. A. Richardson.
Savary, Geo. T.	Groveland,	October 10,	Geo. F. Choate.
Smith, Everett J.	Abington,	Nov. 23,	William H. Wood.
Swigmaster, Jacob (3)	New York,	" 23,	Samuel F. Lyman.
Tilton, Samuel D.	Salem,	" 19,	Geo. F. Choate.
Upham, William	Lowell,	" 9,	Wm. A. Richardson.
Wall, Thomas	Rutland,	" 16,	Henry Chapin.
Webber, Cushing	Roxbury,	" 21,	George White.

**FIRMS, &C.**

- (1) Daniel Morrison & Co.
- (2) Marden & Davis.
- (3) S. G. Field, general partner. Jacob Swigmaster, special partner.
- (4) Flanders & Howe.
- (5) S. H. Lewis & Son.
- (6) E. W. Richards & Co.